

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

LAS VEGAS, NEVADA

In re: USA COMMERCIAL MORTGAGE) JUNE 21, 2006
COMPANY,) E-Filed: 10/21/10
)
Debtor.) Case No.
) BK-S-06-10725-LBR
_____) Chapter 11

PARTIAL TRANSCRIPT OF PROCEEDINGS
OF

STATUS HEARING

RE: MOTION FOR ORDER

UNDER 11, USC, SECTIONS 105(A), 345, AND 363
APPROVING DEBTOR'S PROPOSED CASH MANAGEMENT PROCEDURES
AND INTERIM USE OF CASH IN ACCORDANCE
WITH PROPOSED CASH BUDGET, NO. 8

AND

MOTION DIRECTING PAYMENTS TO DIRECT LENDERS, NO. 336

AND

ORDER SHORTENING TIME

RE: MOTION TO USE CASH COLLATERAL THROUGH JULY 29, 2006,
PURSUANT TO SECOND REVISED BUDGET, NO. 407

AND

MOTION TO RECONSIDER, NO. 609

AND

ORDER SHORTENING TIME

RE: MOTION FOR AUTHORITY

TO FORBEAR AND TO PROVIDE FURTHER FUNDING
FOR CERTAIN OUTSTANDING LOANS, NO. 592

AND

ORDER SHORTENING TIME

RE: MOTION FOR EMERGENCY INTERIM AND PERMANENT ORDERS
AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING,
NO. 588

AND

ORDER SHORTENING TIME

RE: MOTION FOR ORDER APPROVING AGREEMENT
WITH INVESTMENT PARTNERS, NO. 575

AND

Proceedings recorded by electronic sound recording;

1 ORDER SHORTENING TIME
2 RE: APPLICATION FOR ADMINISTRATIVE ORDER
3 ESTABLISHING PROCEDURES FOR INTERIM COMPENSATION
4 AND REIMBURSEMENT OF EXPENSES OF PROFESSIONALS, NO. 570

5 AND
6 ORDER SHORTENING TIME
7 RE: MOTION TO REMOVE FERTITTA ENTERPRISES, INC.,
8 AS A MEMBER OF OFFICIAL COMMITTEE OF HOLDERS
9 OF EXECUTORY CONTRACT RIGHTS, NO. 562

10 AND
11 ORDER SHORTENING TIME
12 RE: APPLICATION TO EMPLOY
13 ORRICK, HERRINGTON & SUTCLIFFE, LLP,
14 AS COUNSEL TO THE OFFICIAL COMMITTEE
15 OF EQUITY SECURITY HOLDERS
16 OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, NO. 619

17 AND
18 ORDER SHORTENING TIME
19 RE: APPLICATION TO EMPLOY BECKLEY SINGLETON, CHTD.,
20 AS SPECIAL NEVADA BANKRUPTCY COUNSEL
21 TO THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
22 OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, NO. 622

23 AND
24 JOINT MOTION FOR NUNC PRO TUNC ORDER
25 CLARIFYING REQUIREMENT TO PROVIDE ACCESS TO INFORMATION,
NO. 521

AND
ORDER SHORTENING TIME
RE: APPLICATION TO EMPLOY FTI CONSULTING, INC.,
AS FINANCIAL ADVISORS NUNC PRO TUNC AS OF JUNE 9, 2006,
NO. 659

AND
ORDER SHORTENING TIME
RE: APPLICATION TO EMPLOY ALVAREZ & MARSAL, LLC,
AS FINANCIAL AND REAL ESTATE ADVISOR
NUNC PRO TUNC TO JUNE 1, 2006, NO. 633

VOLUME 3
P.M. SESSION
BEFORE THE HONORABLE LINDA B. RIEGLE
UNITED STATES BANKRUPTCY JUDGE
Wednesday, June 21, 2006

9:00 a.m.

Court Recorder: Helen C. Smith

Proceedings recorded by electronic sound recording;

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	Witness	Direct	Cross	Red.	Rec.		
1	THOMAS J. ALLISON						
2	(By Ms. Jarvis)	13			70		
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1 (Court reconvened at 03:08:49 p.m.)

2 THE CLERK: Bankruptcy court is now in session.

3 THE COURT: Be seated. All right.

4 Sorry for the delay. Okay.

5 Ms. Jarvis.

6 So really I think this testimony is kind of related to all
7 these motions. So just for those purposes, we'll consider this
8 testimony in connection with all the remaining motions.

9 Go ahead.

10 MS. JARVIS: Okay. We did listen to your questions
11 and have had further discussions.

12 In addition, all four committees told me I forgot something
13 when I stated the revisions, so let me add a few more revisions
14 on the table so we understand what we're talking about.

15 The Executory Contracts Committee wanted me to confirm once
16 again that with respect to the direct-lenders' collections that
17 are in the collection account those are not part of the
18 collateral that is being pledged for the loan, so those are
19 excluded.

20 They also wanted me to -- or I guess it was the
21 Funds Committee wanted to make sure that I was clear that there
22 would be no new originations that would be requested or gone
23 forward with during this interim period.

24 Those, of course, would be subject to further approval by
25 the Court in any case.

1 THE COURT: You mean new beyond the ones that are in
2 these motions here before us.

3 MS. JARVIS: Well, meaning like not a current
4 borrower and not, you know, finishing out funding for a certain
5 project, but simply going out and starting --

6 THE COURT: Oh.

7 MS. JARVIS: -- a whole new project.

8 THE COURT: Oh. Well, that's --

9 MS. JARVIS: Not yet. That's --

10 THE COURT: I assume that's a given, right?

11 MS. JARVIS: Yeah. That's not on the table. That
12 is --

13 THE COURT: Okay.

14 MS. JARVIS: -- but I'm just clarifying to make sure
15 we're all on the same page here.

16 THE COURT: Um-h'm.

17 MS. JARVIS: We would go forward as I explained with
18 respect to the second part to review and file further motions
19 with the Court if the DIP is granted with respect to the
20 certain unfunded -- so-called unfunded commitments with respect
21 to projects that are currently, you know, subject to loans
22 originated by the debtors.

23 Also, there is a provision in the term sheet that deals
24 with a stalking-horse provision with respect to if the entire,
25 you know, portfolio is sold. That is also not on the table

1 during this interim period.

2 The Court very astutely recognized there are a lot of
3 issues with respect to, for instance, the allocation issues,
4 issues with respect to charging certain loans for certain
5 foreclosure actions, et cetera.

6 All of those issues are -- I mean, part of what we did in
7 negotiating all these restrictions is to put those issues off
8 until the final hearing which is when all those issues will be
9 discussed as far as, you know, allocating the specific
10 foreclosure fees to the different loans and so it can be then
11 noticed out in a very comprehensive way prior to the July 25th
12 hearing.

13 So those issues we recognize are issues, are difficult
14 issues, and that is part of what we will be having further
15 discussions with both the committees and the lenders in the
16 interim in order to deal with those issues in the final
17 approval that we will seek.

18 THE COURT: So I guess the question I have is with
19 all that in mind what moneys are needed in the interim and why
20 or are we just -- I guess that's what I'm --

21 MS. JARVIS: Yeah, and I'm going to put Mr. Allison
22 on the --

23 THE COURT: Okay.

24 MS. JARVIS: -- stand to answer that.

25 Then there also has been some financial improvements as

1 well with respect to the fees. The lender has agreed to cut
2 its origination fee from 150,000 to 75,000 with respect to the
3 due-diligence fees which is estimated to not -- be not more
4 than 200,000 of -- up to of costs.

5 With respect to the due diligence that is done, that will
6 be turned over to the debtors so that with respect to what is
7 done we can also use that with respect to dealing with our own
8 portfolio or in servicing these loans.

9 So, for instance, if UCC searches are done and that cost is
10 charged, those would then be given to us as well.

11 In addition, while the collateral management fee would stay
12 the same -- it's a fee of about 10,000 for the month because
13 it's a fixed cost -- the unused credit part of the fee would
14 actually be prorated down to -- since all we're asking for is
15 the \$3,000,000 in the interim. It would not be on the entire
16 amount. It would only be on that part.

17 THE COURT: Okay.

18 MS. JARVIS: Let's see. I think --

19 THE COURT: Okay.

20 MS. JARVIS: I think -- anything else?

21 UNIDENTIFIED SPEAKER: That's it.

22 THE COURT: Now, just so that I know, have these
23 modifications -- do I still have oppositions -- I'm hearing --

24 MS. JARVIS: My -- yeah.

25 THE COURT: -- seeing heads nod. Okay.

1 MS. JARVIS: My -- yeah.

2 UNIDENTIFIED SPEAKER: Yes, your Honor.

3 MS. JARVIS: My understanding, your Honor, is with
4 these modifications all the committees are on-board except that
5 the Funds committees, the two Funds committees, still have
6 issues with respect to the fees.

7 THE COURT: Okay.

8 MS. JARVIS: But with respect to everything else,
9 they're supportive of the deal, and their issues have been
10 resolved.

11 THE COURT: Okay. All right.

12 MS. JARVIS: So may I call --

13 THE COURT: You --

14 MS. JARVIS: -- Mr. Allison --

15 THE COURT: Yes.

16 MS. JARVIS: -- to the stand?

17 THE COURT: Uh-huh.

18 MR. LEVINSON: Your Honor, Marc Levinson for the
19 Diversified Committee.

20 The Funds committees I believe are on-board. We still have
21 significant documentation problems. We'd need to see a revised
22 form of order, assuming the Court approves it, because there
23 are many devil-in-details issues that will have to be worked
24 out. Hopefully, those will be clarified during Mr. Allison's
25 testimony and cross-examination.

1 THE COURT: Okay. Thank you.

2 MS. JARVIS: And, your Honor, I have to apologize.

3 Mr. Levinson did ask me to tell the Court that, and I neglected
4 to put that on the list.

5 The loan documentation is not complete at this point. It
6 is projected that this would close on June 30th. As we said,
7 the loan documentation on our side, we would not agree to it
8 until we got the agreement of the Funds committees and the
9 Unsecured Creditors Committee as well.

10 So, internally, we will work on that, so that we can
11 present a united front or agreement with respect to the lender
12 in getting that loan documentation done.

13 We do anticipate that if the Court does grant this interim
14 order that we are willing -- and I know the lenders' counsel is
15 willing -- to stay tonight to -- we have circulated an order
16 which would be what we're seeking approval of -- not the term
17 sheet, but what's in the order -- and that we would be happy to
18 stay as long as possible to work with committee counsels to get
19 an agreed order tonight that we could submit.

20 THE COURT: Okay. All right. Good.

21 THE CLERK: I'm going to just remind you
22 (indiscernible) you're still under oath.

23 THE WITNESS: Thank you.

24 Thereupon --

25 THOMAS J. ALLISON

1 was recalled as a witness by the Debtor, and having been
2 previously duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MS. JARVIS:

5 Q. Mr. Allison, let me ask you about the status of the current
6 loans being serviced by the debtors, Commercial Mortgage. What
7 is the current status of that loan portfolio?

8 A. Approximately, 42 to 43 percent of it is performing where
9 they're paying interest on a current basis, and the reciprocal
10 is nonperforming where interest is not being paid on a current
11 basis.

12 The portfolio overall, though, I think that one of the
13 things I want to be clear on to people that are in the
14 audience, even -- because a loan is characterized as
15 nonperforming, it doesn't mean that it's not money good.

16 It means that -- it means that it's -- it's perhaps run out
17 of interest reserve or the project is mature and is -- and
18 potentially could be monetized.

19 We have had some luck. I -- I think I will be modest and
20 say some luck thus far in collecting over \$50,000,000 of
21 principal in the first month and \$10,000,000 of -- of past-due
22 interest thus far.

23 I think we've been able this month -- this month being the
24 month of May and in June. We have commitments to -- who are
25 identified. We'll pay out another six to seven loans.

1 So we are working the portfolio to monetize it, and as
2 we're monetizing it, we're monetizing both performing and
3 nonperforming loans.

4 The problem with the loan portfolio as we go to monetize it
5 is that, you know, we're -- we're having a few factors come
6 into play.

7 Our loan-servicing fees are slowing down. That's a
8 combination of paying -- of monetizing loans as well as
9 borrowers starting not to pay or slowing down payments.

10 So we have -- or what I look at is while we're trying to
11 enforce and collect the past-due loans -- as the debtor in
12 possession that's what I -- or one of my jobs -- and to
13 maximize the value of the loans that are outstanding that may
14 be -- may need -- where there is a series of loans that need
15 new money where the -- where USA Commercial Mortgage committed
16 to lend X amount of dollars and because of the bankruptcy they
17 -- there's no more access to public moneys to continue to fund
18 those loans.

19 So the portfolio continues -- we've been -- we've been able
20 to reduce it. We've been able to collect past-due loans at
21 par, and we've been able to -- to look at potential enforcement
22 actions.

23 It's been a challenge to look at enforcement actions
24 without having a substantial amount of funds to foreclose on --
25 on delinquent properties or -- and use the threat of

1 foreclosure on delinquent properties to monetize them.

2 So if I can give you a state of the portfolio is we -- as
3 we continue to pay the portfolio down and -- and get loans that
4 are both performing or nonperforming monetized, this portfolio
5 is in a shrinking state right now.

6 There is a need in the portfolio to fund about -- I think
7 to fund 17 loans which represents about 41.5 million dollars
8 new money.

9 Q. So --

10 A. So if I can give -- or an overall characterization is that
11 we're working a strategy of collection. We're working a
12 strategy to monetize and get loans paid down and bring as much
13 money back into the estate as possible.

14 And we're working a strategy to mitigate claims against the
15 estate on commitments that USA Commercial Mortgage made to
16 builders that have projects that are in -- in some percentage
17 of completion.

18 Q. So you've developed a plan of action for all of the I would
19 call them problem loans that you are servicing; is --

20 A. Yes.

21 Q. Is that correct?

22 A. The -- the problem loans that we -- we've gone through
23 various strategies, and each -- each loan has its own distinct
24 strategy to it. Some of the strategies are (indiscernible) to
25 do.

1 For example, if we want to foreclose on a transaction where
2 we know that we may have to hold it for some period of time or
3 we -- or that we need to use the threat of foreclosure, we have
4 to show some liquidity in order to execute that plan.

5 Q. So at current, are you testifying that you do not have
6 sufficient liquidity to carry forth all of the action plans
7 that you've --

8 A. That's correct. With the --

9 Q. -- you've --

10 A. With the budget the way we've constructed it, we have a
11 million-three of cash on hand.

12 And as we look at foreclosure actions that potentially we
13 would have to take just doing the foreclosure actions without
14 looking at the costs to carry, costs to handle, the insurance
15 and -- and remarketing the properties, it -- it will take some
16 -- it will take more funds than we have -- than we currently
17 have to execute the monetization strategies.

18 Q. And so is it fair to say that as you collect more loans
19 that the loans that are remaining become the more problematic
20 loans?

21 A. That's a fair statement. That's a fair statement,
22 Ms. Jarvis.

23 As we collect loans down, what we're probably going to be
24 left with are the most problematic ones as we -- as we -- as we
25 try and monetize the portfolio.

1 Plus, what we will also be left with are the loans that
2 were newly -- that were originated in the first quarter of '06,
3 and a series of those loans need additional funds to -- to
4 monetize, and if we don't provide those funds, we'll be looking
5 at losses on both the -- both interest and principal in -- in
6 that part of the portfolio.

7 Q. And the servicing fees on these loans that are remaining as
8 you pay off some of the better loans, you're not collecting
9 those servicing fees currently; is that --

10 A. No. We wouldn't collect those servicing fees until we
11 ultimately monetize the loan. So --

12 Q. So --

13 A. -- essentially what we'd be -- what we're looking at as
14 liquidity is -- is -- is having some funding to fund our
15 operation during the carry period between when we foreclose and
16 take an asset into -- into -- into our possession and when it's
17 ultimately monetized, because when it's ultimately monetized,
18 we'll pick up our servicing fees and -- and the fees that are
19 tied to it, but we won't have the liquidity to -- to monetize
20 it during that period of time.

21 THE COURT: Let me ask you to -- since this is an
22 interim motion --

23 UNIDENTIFIED SPEAKER: Yeah.

24 THE COURT: -- and maybe you are -- let me focus on
25 the needs for this very interim period rather than what you

1 anticipate -- I mean, I think it probably makes sense to do
2 both because the issue is if -- maybe there's a need for
3 interim -- maybe there shouldn't be any loan funded in which
4 case it doesn't make any difference whether it's now or later,
5 but let me -- because I wanted to get a sense of what's needed
6 in the interim period.

7 MS. JARVIS: I'm going to tie that in because we're
8 going to go right now to the budget.

9 THE COURT: Okay.

10 MS. JARVIS: Okay?

11 BY MS. JARVIS:

12 Q. Let me show you what has been --

13 MS. JARVIS: Let me have this marked. Actually, I'll
14 mark these both.

15 This is Exhibit 1 and Exhibit 2.

16 THE CLERK: Okay.

17 MS. JARVIS: Your Honor, I'd like to mark as
18 Exhibit 1 -- this is the budget that was attached to
19 Mr. Allison's declaration. I think it's Exhibit A, the one
20 that was filed yesterday.

21 THE CLERK: You can use that document
22 (indiscernible).

23 THE COURT: Oh, I got the wrong one.

24 THE CLERK: Is it on your screen?

25 THE WITNESS: Yes, it is. Thank you.

1 THE CLERK: Is it on your screen, Judge?

2 THE COURT: I got it. I have the wrong one.

3 June 5th I can get rid of, right?

4 MS. JARVIS: Yep. I mean, June 5th -- we're going to
5 do a little bit of a comparison so you can just see -- explain
6 what has changed from that, but I'm not going to put that up
7 because then that's confusing. We'll just simply -- I have a
8 comparison that we will use to demonstrate the differences.
9 Okay.

10 BY MS. JARVIS:

11 Q. Can you generally describe how this budget that was
12 attached to your affidavit yesterday or your declaration
13 yesterday differs from the one that was attached to the
14 cash-management motion.

15 A. Sure.

16 Q. Which is I think the June 5th.

17 A. It varies in -- in several ways. Essentially, one of the
18 -- one of the more -- there's -- there's several material ways
19 it varies, and let me try and go through them.

20 The first of which is that we moved the interest -- the
21 interest that we collected from the borrowers that would have
22 been paid -- that would have been paid out out of the operating
23 cash line, and we reflect it down below into -- into the line
24 that's styled excess funds collected. It's the second line --

25 Q. And that's the --

1 A. -- from the bottom.

2 Q. That's the line I'm pointing to --

3 A. Right.

4 Q. -- right?

5 A. Ms. Jarvis is pointing to it on -- on her machine.

6 Q. Okay.

7 A. It's the \$10,000,000 number.

8 So we moved that out of our operating cash. So I think
9 it's the first and it's an important part because instead of --
10 it -- it -- we'll -- we'll figure out with -- with the
11 committees, you know, whose property that is, but essentially
12 that's interest that was already paid to the investors which
13 we've collected back from nonperforming loans.

14 The -- the next part of the -- of the -- of the transaction
15 that I think is important is that there -- in the operating
16 line we show previously interest that was earned on the -- the
17 funds that we were holding, and we've moved that down to the --
18 moved that out of the operating line.

19 We have moved the -- the interest earned again down into --
20 down into one of the lower lines that --

21 Q. So you're talking about moving this --

22 A. Right.

23 Q. -- again down --

24 A. Right.

25 Q. -- into this category --

1 A. It's --

2 Q. -- so it's no longer --

3 A. That's correct --

4 Q. -- available for --

5 A. -- Ms. Jarvis. That's --

6 Q. -- operations.

7 A. So it's no longer available for operations.

8 Q. And was this done as a result of negotiations with the
9 committees?

10 A. Yes. It was -- we -- we listened to the committees'
11 concern and -- and their fears and -- and the indirect
12 investors' fears for that matter, and we moved it to -- we
13 moved it down as to decide at a later date, but clearly to move
14 it out of the -- out of the working capital so that we could
15 have a clear picture of what the estate looks like with those
16 moneys out of the -- out of the picture.

17 Q. And so in moving that then what you're saying is that this
18 is not going to be used to fund any operations --

19 A. No.

20 Q. -- during this interim period.

21 A. That's correct. Neither the interest nor the -- nor the --
22 nor the amount of -- of past -- neither the interest earned on
23 the past-due interest that we've collected or the interest
24 itself would be used to fund the operation.

25 MS. JARVIS: Let me mark, in fact, one other exhibit

1 which might be helpful. This is the comparison. I'm going to
2 have this marked as Exhibit 3.

3 (Colloquy not on the record.)

4 THE COURT: Is this the June 5th one? Is this the
5 June 5th one?

6 MS. JARVIS: This is --

7 THE COURT: Oh.

8 MS. JARVIS: This is comparing the June 5th budget to
9 the budget that was filed yesterday, and I think it just might
10 be faster -- we prepared this --

11 THE COURT: Yes. That's fine.

12 MS. JARVIS: -- just to --

13 THE WITNESS: Just to move --

14 MS. JARVIS: -- kind of --

15 THE WITNESS: -- through it.

16 MS. JARVIS: -- move things quickly.

17 THE WITNESS: Several -- while we're setting it up,
18 I'll -- I'll start going through it.

19 One of the original -- one of the original beliefs that we
20 had was that through the credit -- the DIP facility that we
21 would be able to originate new loans.

22 I had mentioned previously in my testimony this morning
23 that we earned ten percent -- typically ten percent on any new
24 loan originated in terms of upfront fees.

25 So we took that -- the ability to continue in operation to

1 generate fees out of the equation. We also took out other
2 collections that would be tied to new originations which is the
3 14.1 million dollars.

4 Going down the line, the \$16,000,000 is the -- the
5 \$16,000,000 in -- in this line, your Honor, ties to the
6 \$10,000,000 that's in the budget plus the remaining \$6,000,000
7 we're forecasting to collect over the period of time of
8 past-due interest.

9 The interest from the collection account we referred to
10 earlier is the \$1,000,000 on our -- on our interest, and the
11 estimated service fees, while we looked at it being -- in our
12 original budget, we thought it to be 1.2 million dollars for --
13 our current line of sight has moved it down to \$944,000 as --

14 BY MS. JARVIS:

15 Q. And --

16 A. -- we're collecting loans out.

17 Q. And is that a demonstration of what you talked about as the
18 slowing down of --

19 A. Yes.

20 Q. -- the collection of servicing fees?

21 A. Yes. It's a combination of it slowing down and paying off
22 some of the loans, so we have a decreasing amount of loans to
23 -- to cover the cost of -- of administering the estate.

24 And loan -- and then the last part that we added to the
25 budget was \$800,000 for foreclosures. As we're -- as we're

1 looking at loans and looking at problems, you know, I -- I
2 think the faster we move to -- move to foreclose on the
3 nonperformers and move to monetize them the better -- the
4 better off we are for the estate.

5 So I did budget an incremental \$800,000 to move into
6 foreclosure actions on some of the -- the more delinquent
7 nonperforming loans.

8 With respect to cash disbursements of professional fees, we
9 had originally baked that into our -- our plan, and, well,
10 we've pushed the professional-fee payment out, and essentially
11 the difference between the three-four and the two-five, we
12 assume that at some point in time the -- the Court would
13 authorize a -- a monthly payment and/or a payment that we -- of
14 our professional fees that were accrued at approximately 80
15 percent of face value.

16 So those are -- those are the key dynamics, and the lines
17 below this are the reciprocal of where they fall out.

18 Q. Let me ask you then just to kind of go back to that last
19 point, and then I have one other question I want to ask you on
20 this.

21 When you talk about the professional fees, in the revised
22 budget, then, if you look at -- let's see. Which line is it?
23 This line here.

24 Is that -- I mean, that's not in your cash forecast, but
25 what does that represent?

1 A. Essentially, what I felt it was fair to depict for the
2 Court and for all of our committees as we're looking at this
3 case, what the cost of -- of -- of fee -- the -- the fee costs
4 of administering this case is, and while we continue to accrue
5 expenses, I felt it was fair for the -- for all of the -- all
6 the professionals and the estate to see what the cost of -- of
7 the burden is on this estate to continue to administer it.

8 Q. So to give just a -- basically, an overall more accurate --

9 A. Picture.

10 Q. -- picture of eventually --

11 A. Rather --

12 Q. -- what it looks like.

13 A. Exactly, Ms. Jarvis.

14 Rather than using cash accounting and saying, gee, it's not
15 -- professional fees aren't due to their -- they're approved.
16 There is an -- there is an amount of fees that are being
17 incurred each week, and I felt it was fair to depict for the
18 Court even if it's an estimate, you know, of what the cost of
19 administration is on a weekly basis.

20 Q. And does this amount include all of the committees?

21 A. I believe that it -- yeah. It doesn't include all the
22 committees, but it does give an -- an idea of -- of fees. I
23 think we can go to a separate chart that --

24 Q. It's this one.

25 A. On page 3 I believe it is.

1 MS. CARLYON: Your Honor, I would just object because
2 of the timing. None of --

3 THE COURT RECORDER: Counsel, I'm sorry. Could you
4 move where the microphone is closer to you.

5 MS. CARLYON: I'm sorry.

6 THE COURT RECORDER: Thank you.

7 MS. CARLYON: Candace Carlyon for the First Trust
8 Deed Fund.

9 There are no professional fees contemplated to be paid from
10 the interim draws, and I think it would -- you know, although
11 it's arguably relevant to the final motion, I think just to
12 expedite matters I would object to it being presented at this
13 time.

14 THE COURT: Okay.

15 MS. JARVIS: Your Honor, we're just trying to give an
16 accurate picture --

17 THE COURT: Well, we do have very short time, and I
18 appreciate --

19 MS. JARVIS: Okay.

20 THE COURT: -- the fact that, you know, your
21 presentation is kind of put out of whack by taking all morning
22 on the other matter, and that was my fault, but, you know,
23 we've got another I don't know how many hours, so let's make it
24 shorter rather than longer.

25 MS. JARVIS: Let me move through it.

1 BY MS. JARVIS:

2 Q. Let me ask you then going back to this page.

3 When you reduced the servicing fees, was this done in order
4 to give again kind of a more realistic picture of what kind of
5 the --

6 A. It's our line of sight of what we think --

7 Q. Yeah.

8 A. -- we can collect over the period, Ms. Jarvis.

9 Q. So the difference is -- I mean, it doesn't necessarily mean
10 that you -- if all goes perfect, you might not meet the higher
11 budget, but this is basically giving a more realistic picture
12 of --

13 A. This is a --

14 Q. -- the downside.

15 A. This is a line -- a line of sight of what we believe we can
16 collect. The 1.2 is a bit more optimistic.

17 Q. Okay. In fact, could this -- depending on how these
18 collections come in, could it be -- the number be actually
19 below that amount?

20 A. Yes.

21 Q. Why don't you then just go through the changes on the --

22 A. Collections account?

23 Q. -- expense side.

24 A. Okay.

25 MS. CARLYON: Again, your Honor, my objection would

1 be to the extent that they are the 13-week period and not the
2 four-week period, I object to introducing that testimony at
3 this time because it's not relevant, and I apologize for doing
4 so. If it wasn't for the short time frame, I would let it go.

5 MS. JARVIS: The question I just asked him with
6 respect to the servicing fees does go to the four-week period,
7 your Honor, because this again -- the collection amount is
8 lowered, but there also is a possibility that it would be below
9 that as well, and that --

10 THE COURT: Okay.

11 MS. JARVIS: -- factors --

12 MS. CARLYON: I'm sorry. I apologize. I thought
13 counsel was asking about the 13-week total document.

14 Apparently, we're just asking about something for the next
15 four weeks?

16 MS. JARVIS: Yes. Well, it goes across the whole
17 board, but it also --

18 THE COURT: Okay. Well, let's just move on.
19 Again, focus --

20 MS. JARVIS: Yeah.

21 THE COURT: -- on the three-week period because I --
22 let me note -- maybe this is one of the questions.

23 Is there -- I guess -- is there still opposition to
24 borrowing anything at all? I gather there is.

25 MS. CARLYON: Your Honor, because of the fees that

1 are impacted by this request, we are currently opposing the
2 interim request, and because we are opposing the interim
3 request, we're opposing it both on the grounds that the fees
4 are totally disproportionate, but also on the grounds that the
5 request disproportionately affects our clients and that there
6 is no demonstrated need in this interim period for the
7 financing at all.

8 THE COURT: Okay.

9 BY MS. JARVIS:

10 Q. Let me just cut to the chase and ask you. This budget
11 still -- it's more a conservative budget. It does show that if
12 this budget is met that you would not need financing.

13 Is this -- I mean, is there reason to believe that, in
14 fact, you would need financing during this four-week period?

15 A. If we're going to be credible to go out and -- and -- and
16 collect problem loans, Ms. Jarvis, we're going to need some
17 liquidity to do that, liquidity greater than we currently have
18 on our balance sheet in terms of cash.

19 Our business is -- the business is being impacted. I'm
20 losing an employee a week because of concerns over viability of
21 the business.

22 I am losing the -- I've -- I've been chasing loans and
23 monetizing them with a threat of foreclosure without having --
24 you know, telling people that I would have a DIP in place, and
25 without having the ability to -- for -- to have a credible

1 belief to the borrowers that are in my delinquent pile which is
2 over 60 percent of the portfolio that I actually can foreclose
3 on them and move -- and move to hold the assets, I don't have a
4 -- I -- I'm -- I'm in a weakened position to monetize assets.

5 And then, finally, there's a small loan that needs to be
6 monetized for Boise/Gowen of \$125,000. That \$125,000 --
7 Mr. Bice's estate was very clear with me -- could not be used
8 -- we could not use funds within the company to -- to monetize
9 -- to make that -- to make that loan to finish off that project
10 and -- and -- and enhance the value of the Boise/Gowen project.

11 So there's a series of needs from -- from looking at how to
12 enforce and how to, you know, monetize and bring money back
13 into this estate to -- to looking at potentially working
14 through -- working through losing -- continuing to lose people
15 and losing the belief within the -- the investor -- the -- the
16 borrower body that we can go out and -- and fully enforce
17 collections and take the next steps along the path, because if
18 we look at this budget as it stands, our cash balance decreases
19 each week.

20 The borrowers are smart. They're going to look at a
21 waiting game that there -- that as we continue to -- we
22 continue to -- to burn cash each week, it's not -- it's not
23 outside the realm of reason that we'll run out of cash within a
24 period of time, that if our borrowers wait they don't have to
25 worry about paying us back.

1 So I think that those -- those issues are in front of us,
2 and -- and while it shows that I don't need to borrow to make
3 payroll tomorrow -- you know, we're not making widgets in this
4 business.

5 What we're doing is trying to enforce and collect a -- a
6 series of problematic loans and enforce them to the best of my
7 ability to get those -- get this money paid back so I can get
8 the investors paid back.

9 Q. So let me just -- to move this along, let me just summarize
10 what I think you've just said which is this money is needed now
11 in order to have liquidity behind you in order to be able --

12 MS. CARLYON: Objection --

13 BY MS. JARVIS:

14 Q. -- to collect loans.

15 MS. CARLYON: -- your Honor. It's leading and
16 inappropriate.

17 MS. JARVIS: Okay. I've just --

18 THE COURT: Sustained.

19 If you want to ask him to summarize it in one sentence,
20 that's fine, but --

21 MS. JARVIS: Okay.

22 BY MS. JARVIS:

23 Q. I think you expressed three issues. What is it going to be
24 used for with respect to collecting loans from borrowers? Why
25 is it important to have it now?

1 A. To -- to -- to show the borrowers have the ability to stay
2 -- stay in place, that the USA Commercial Mortgage can stay
3 intact and enforce the loans and monetize them.

4 The second part is that the service fees are continuing to
5 decline, and, you know, if -- if -- if we continue to stay the
6 course, the -- the estate will run out of cash.

7 Q. And is it possible during this four-week period that the
8 servicing fees will not be sufficient, that you could run out
9 of cash?

10 A. It -- it's -- we're dependent upon -- we're dependent upon
11 collections in order for those servicing fees to be received.

12 Q. So --

13 A. So the answer is -- the answer is most likely. I -- I'm
14 just telling you that I'm -- I try to be very realistic in the
15 944 number and say, gee, I think I can get that, but we're
16 seeing the -- we're seeing slowdowns in collections each month.

17 Each -- each week we have a collection meeting. We look at
18 what our interest has collected for -- for the month to date
19 and service fees being collected month to date so we have
20 enough money to run the estate, and -- and as -- as we continue
21 to -- to push these loans and push hard to collect these loans
22 down, we're -- we're running with less and less money in the
23 estate to do it.

24 Q. And then will you draw down the 125,000 for the Boise/Gowen
25 loan --

1 A. Yes.

2 Q. -- if the Court approves that funding today?

3 A. If the Court approves it, I would draw it down and fund it.
4 I think that it's a commercially-reasonable transaction to do,
5 and I do think if I -- when I do that, it will enhance my
6 ability to collect the loan at its maturity.

7 The Boise/Gowen loan matures in the last part of August,
8 and I think that it's the last part of the engineering that's
9 needed to do to -- to monetize -- to put the -- put that
10 particular project in a way it can be marketed.

11 Q. And have you done due diligence on that project?

12 A. Yes, I have. I have -- I have and I've worked with
13 Mr. Russell, the principal, on it. There's -- Mr. Russell is
14 -- I -- I've pushed Mr. Russell a variety of different ways to
15 see if we could refinance or find different financing sources
16 for this transaction, and -- and they're not available.

17 Q. And by financing this transaction, what are you
18 accomplishing with respect to the current lenders in the loan?

19 A. Well, I think we will improve their position.

20 The \$125,000 is structured to go in in a way that would not
21 impair the existing lenders, and it would -- I think without it
22 I'm not sure I'll get the loan out at par. With the money in I
23 think I can get the loan out at par plus all the accrued
24 interest on it.

25 Q. And what do you believe that you're accomplishing for

1 Commercial Mortgage in funding this last piece of this loan?

2 A. I -- I think -- what I'm trying to do is get for
3 Commercial Mortgage, you know -- besides honoring a commitment
4 to -- to put money out that we can bring back and not -- not
5 trigger any losses for Commercial Mortgage on top of what --
6 what some of the borrowers may -- what some of the investors
7 may already have incurred.

8 Q. So the first piece of this that you're talking about is
9 this operating capital, but also dealing with Boise/Gowen loan.
10 Is this tied, then, to a second piece of this loan?

11 A. Yes, Ms. Jarvis, and that's -- that's really the most
12 important part is there's -- when -- when I took over and I met
13 with management, I was -- I was told there was \$65,000,000 of
14 unfunded commitments that existed at USA Commercial Mortgage,
15 and after meeting with management that number grew to about
16 \$74,000,000 of unfunded commitments.

17 What we've been -- what we've been doing during our period
18 of time in addition to try and collect loans down, we're
19 looking at loans that had been originated and need -- and where
20 -- where there was a commitment to lend additional moneys.
21 Those moneys -- the access to those moneys ceased when we filed
22 the Chapter 11.

23 Q. Let me just stop you just for a minute. You're not saying
24 when you say commitment -- it's not your position that the
25 company is required to fund it, is it?

1 A. The -- the company -- the -- USA Commercial Mortgage on
2 several of the transactions entered into commitments to -- to
3 lend more than what -- what was in the original funding
4 transaction.

5 MS. CARLYON: Your Honor, I object again. This is
6 not --

7 UNIDENTIFIED SPEAKER NO. 1: Will the person --

8 MS. CARLYON: -- part of what's proposed --

9 UNIDENTIFIED SPEAKER NO. 1: -- breathing into the
10 phone --

11 MS. CARLYON: -- for the interim funding.

12 UNIDENTIFIED SPEAKER NO. 1: -- please stop
13 breathing --

14 MS. JARVIS: This is tied --

15 UNIDENTIFIED SPEAKER NO. 1: -- into the phone.

16 MS. JARVIS: -- to the interim funding, and if you --

17 UNIDENTIFIED SPEAKER NO. 1: Mute the phone.

18 MS. JARVIS: If we could just get through --

19 UNIDENTIFIED SPEAKER NO. 1: Star six.

20 MS. JARVIS: -- an explanation of this --

21 UNIDENTIFIED SPEAKER NO. 1: Star six.

22 MS. JARVIS: -- I'll have him tie it back --

23 THE COURT: Okay.

24 UNIDENTIFIED SPEAKER NO. 1: Mute the phone.

25 MS. JARVIS: -- as to why this is important.

1 UNIDENTIFIED SPEAKER NO. 2: Thanks, Michael.

2 THE COURT: All right.

3 THE WITNESS: The -- if I can keep going. The -- the
4 key part of these -- the transactions that we're looking at
5 funding are -- are basically cut across most of the -- most of
6 the -- most of the various committees.

7 There are -- there's steel out of the ground. My concern
8 is that if we don't continue to fund these -- if we don't round
9 out the funding on these loans, we -- we run the risk of being
10 sued by the borrowers and also that someone else is going to
11 come in and finish them and while I think that if we continue
12 to -- to fund these loans, we could recoup them at par plus
13 accrued interest.

14 If we don't, my concern is that we're going to lose -- lose
15 all -- some or all of the principal and accrued interest on
16 these transactions and we're locking in some losses.

17 So, essentially, what I've been looking at is putting
18 together a -- a -- a funding source that will fund these deals
19 and fund them to completion so that I can maximize the value of
20 getting the -- getting the money back to the investors at the
21 end of the day.

22 The other part that I have negotiated with CapitalSource is
23 -- and if I look at my (indiscernible) cost of funds on -- on
24 this \$41,000,000, it's -- it's a little bit -- it's around nine
25 percent. My -- my average lending rate is 12 percent, so

1 essentially what I've locked in as a positive spread of 300
2 basis points on these transactions.

3 So not only does -- not only do I -- will I be able to
4 maximize the value of these loans in terms of building them to
5 completion, but also generate some positive spread income which
6 enures to the benefit of this estate.

7 BY MS. JARVIS:

8 Q. And have borrowers actually threatened to sue
9 Commercial Mortgage with respect to these so-called unfunded
10 commitments?

11 A. Yes. There's actually a lawyer in the -- in the courtroom
12 today that's told me that he's got a lawsuit on -- on -- on his
13 desk.

14 Q. Are these -- let me refer to --

15 MS. CARLYON: Objection. Hearsay.

16 THE COURT: Sustained.

17 BY MS. JARVIS:

18 Q. Let me refer to what has been marked as I think Exhibit 2
19 that was attached to your declaration. Was this prepared by
20 your staff under your direction?

21 A. It was prepared by my staff under my direction.

22 Q. And can you explain what this sets forth.

23 A. This is a summary of --

24 THE COURT: Again, I really want you to focus on just
25 this interim period. I know what you're talking about because

1 -- but if we're getting ahead to the plan purposes --

2 MS. JARVIS: Okay.

3 THE COURT: -- we're way ahead of ourselves.

4 MS. JARVIS: All right. I will move over then.

5 BY MS. JARVIS:

6 Q. Just let me ask you with respect to these unfunded
7 commitments, are they time sensitive?

8 A. Yes.

9 Q. And can you give an example of that.

10 A. There is --

11 MS. CARLYON: Objection unless it's within the
12 interim period.

13 THE COURT: That's sustained.

14 MS. JARVIS: Let me go back and just ask.

15 BY MS. JARVIS:

16 Q. Do you intend to -- if this DIP financing is accepted
17 today, do you intend to during this interim period go forward
18 to negotiate for funding these -- or for getting a commitment
19 to fund these unfunded commitments?

20 A. Yes. That was what was contemplated not only just the 15
21 -- the -- the money that was contemplated for the first part of
22 the transaction, but going through these transactions and
23 getting them committed for funding so that we could preserve
24 and protect these -- these projects that are -- that are --
25 where there's progress in place, where there's potential

1 mechanic's liens, potential of workers walking off the job. I
2 want to try and project the values -- the value of the estate.

3 Q. And without having the first piece of the interim DIP
4 financing approved, is this opportunity available to you with
5 respect to getting a commitment from CapitalSource on these
6 unfunded commitments?

7 A. No.

8 Q. So in your business judgment, is this an important reason
9 for obtaining the DIP financing?

10 MS. CARLYON: Objection. Leading.

11 THE WITNESS: Yes. It's an --

12 THE COURT: Sustained.

13 THE WITNESS: It's --

14 THE COURT: Sustained.

15 THE WITNESS: It's -- it --

16 THE COURT: There was an objection --

17 MS. JARVIS: Yeah.

18 THE COURT: -- and I sustained it, so you need to --

19 MS. JARVIS: Yeah. Why don't --

20 THE COURT: The question --

21 THE WITNESS: I'm sorry, your Honor.

22 THE COURT: -- is withdrawn.

23 BY MS. JARVIS:

24 Q. Mr. Allison, why don't you explain -- connect up -- or why
25 don't you explain why -- with respect to the approval you're

1 seeking for today, why that is important with respect to these
2 unfunded commitments.

3 MS. CARLYON: Objection. Leading.

4 THE COURT: No, she said explain why. That -- you
5 know, I want to get through it. You're right. It's still
6 leading, but, you know, let's get through it.

7 MS. CARLYON: I appreciate that, your Honor.

8 THE COURT: And please don't ask leading questions.

9 MS. JARVIS: Okay.

10 THE COURT: All right. This witness can certainly
11 testify if you just ask him what's your rationale and be done
12 with it.

13 THE WITNESS: My -- my rationale, your Honor, to do
14 these deals is that I want to protect this estate.

15 I know that -- I -- I've diligenced (sic) these loans, and
16 I've -- as I said, your Honor, I took them down from many more
17 loans than this and many more dollars than this to what I think
18 are -- are transactions that are money good, that could be
19 monetized and brought in at par for this estate.

20 They need funding to do that. I don't believe that the
21 funding is available through third parties outside of --
22 outside of what's committed here at -- what we've gone through
23 with CapitalSource and doing each of these transactions, and
24 funding them help -- will help us monetize -- will help us
25 maximize the recovery to all the creditors in this estate.

1 BY MS. JARVIS:

2 Q. And let me ask you a question that was asked before, but
3 you didn't have a chance to answer. Are these time sensitive?

4 A. Yes. They're very -- they're -- they're time sensitive.
5 These -- these are projects that are --

6 MS. CARLYON: Again, I object.

7 THE WITNESS: They have steel in the air.

8 MS. CARLYON: Wait.

9 I object except as to projects which are going to be funded
10 from the interim request.

11 THE COURT: I'll sustain that.

12 BY MS. JARVIS:

13 Q. If the DIP financing is allowed today, what, if any, of
14 these projects are you going to discuss with the DIP financier
15 for future financing under the second part?

16 A. All of the projects --

17 MS. CARLYON: Same objection, your Honor.

18 BY MS. JARVIS:

19 Q. Within this interim period. Within this next month.

20 A. Within the next month --

21 MS. CARLYON: Wait, wait, wait.

22 Same objection, and the question what are you going to
23 discuss with the lender if this is accrued is just so outside
24 of relevant to the issues here that we're just wasting our
25 time.

1 MS. JARVIS: Then let me ask -- your Honor, I think
2 this is an important part of the DIP financing. If he
3 cannot --

4 THE COURT: Well, let's not have a --

5 MS. JARVIS: But this --

6 THE COURT: Let's not have you testify.

7 MS. JARVIS: No. I know, but what I'm -- okay.

8 THE COURT: So just --

9 MS. JARVIS: Let me just ask him.

10 THE COURT: -- ask a question.

11 MS. JARVIS: Okay.

12 BY MS. JARVIS:

13 Q. What of these unfunded commitments do you intend to get a
14 motion on file before the July 25th hearing?

15 A. All of the -- all the transactions that are -- that are on
16 these sheets, the 17 transactions, I plan to have a motion on
17 file to fund them. I'm hoping to have that -- that put on our
18 August 4th hearing date that they would be up for final
19 approval.

20 I've already started a discussion with financial advisors
21 for one of the committees to explain to them the rationale
22 behind each of the transactions of why those fundings make
23 sense.

24 Again, I'm trying to -- these fundings are an integral part
25 of preserving the value of this estate. They are linked to the

1 first part of the funding because during the intervening period
2 we're going to be working with CapitalSource and the
3 committees, committees' financial advisors, to -- to go through
4 each of these transactions and allow them to be fully vetted.

5 Q. And will each of these transactions be separately noticed?

6 A. Yes.

7 Q. Will they be noticed to all of the lenders in each loan?

8 A. Yes.

9 Q. And will they be -- is it your intention to notice them on
10 the full 25-day period?

11 A. Yes.

12 Q. Let me ask you, then, just I guess the third piece. Is the
13 third piece -- what is the third piece of this DIP financing?

14 A. The third piece of the DIP financing is the ability to --
15 and to creating a warehouse facility within a defined parameter
16 to originate new transactions. If this debtor is to
17 rehabilitate itself and exit bankruptcy as a -- as a lender
18 that -- it will need a warehouse facility to do so.

19 We are -- the company itself is receiving -- is receiving
20 loan proposals each day that -- that could potentially be
21 funded.

22 There are transactions out there -- USA Capital is -- it
23 has been a highly-regarded hard-money lender even though it's
24 lost its way. There are -- there are a lot of -- there are a
25 lot of borrowers that want to continue to do business with it.

1 Q. And is this third piece related to the interim financing
2 you're seeking approval for today?

3 A. It's not, but it's -- it's a -- it's a part of how, you
4 know -- it's a part of how we renew the company.

5 Q. Have you negotiated the DIP financing that is currently as
6 modified with all of the committees?

7 A. Yes.

8 Q. Let me ask how each of the -- as you negotiate this on
9 behalf of the estate, how are -- in your opinion as the CEO of
10 this company, how are the funds benefitted by this interim
11 financing?

12 In fact, let me take them one at a time. What about the
13 Diversified Trust Deed Fund?

14 A. Diversified Trust Deed Fund is -- is going to need the
15 majority of the enforcement. They have the -- a disparate
16 number of -- of unperforming -- of nonperforming loans which --
17 several of which will need to be foreclosed upon.

18 So to the extent that I'm going to take into foreclosure
19 actions, the Diversified Trust Deed Fund will be benefitted by
20 the foreclosures.

21 Q. And would you anticipate that some of this money would be
22 used during this interim period or could be used during this
23 interim period for those enforcement actions?

24 A. Yes.

25 Q. In your opinion as the CEO of this company, how does this

1 financing benefit the First Trust Deed Fund?

2 A. On the First Trust Deed Fund, going to the transactions
3 which potentially could be losses on -- on this loan summary,
4 the 17 loans, the First Trust Deed Fund is in the majority of
5 them. I think they're in 11 of them in various -- various
6 forms of percentages of ownership.

7 And, again, I think that by going forward on this and going
8 to the next step which is finishing out these projects, it will
9 benefit First Trust Deed Fund rather than triggering losses on
10 -- on part of its portfolio.

11 It would -- it would in turn allow that portfolio to -- to
12 monetize and -- and return a greater return than if -- if these
13 projects aren't completed.

14 Q. In your opinion as the CEO of this company, how will this
15 benefit the direct-lender group?

16 A. For -- on the direct-lender group, the -- they are all --
17 they are in the vast majority of these loans as well that need
18 funding, and this preserves from both an enforcement action
19 against nonperforming loans that are in the direct-lender pool
20 -- pool as well as with respect to the -- these 17 transactions
21 which the direct lenders are in the majority of them. It will
22 -- it will, indeed, enhance the value they'll recover.

23 Q. And in your opinion as the CEO of this company, how does
24 this benefit the unsecured-creditors group?

25 A. By -- by finishing out these projects and avoiding -- and

1 limiting the amount of claims against the estate, we should be
2 able to convey a greater return to the unsecured creditors.

3 Q. How many -- or did you negotiate with other potential
4 debtor-in-possession lenders prior to entering into this term
5 sheet?

6 A. Yes, I did, nine of them.

7 Q. About how many other lenders did you negotiate with?

8 A. I'm sorry. I -- I -- I went into significant negotiations
9 with nine other credit facility -- with nine other lending
10 groups.

11 Q. And are the terms of this -- what are the -- comparing the
12 terms that you received here, how did it compare with the other
13 negotiations you (indiscernible)?

14 A. They're superior to all the other terms that we've
15 received.

16 Q. And based on your negotiations with these nine other
17 lenders, is it your opinion that this is the best deal that --
18 or this is a good deal for the estate and the best deal that
19 you have received with respect to these negotiations?

20 A. This is the best deal I have received. This is the best
21 deal I've received, and I've been in extreme -- been in very
22 tough negotiations.

23 It's a -- this is a hard portfolio to understand with the
24 -- with the way the loans -- the way the business has been
25 structured, and CapSource has come through with a very

1 reasonable proposal for us.

2 Q. And I think you testified before that you have a background
3 as a banker; is that correct?

4 A. Yes, Ms. Jarvis.

5 Q. From your banking background, what is your view of this
6 term sheet that you've negotiated?

7 A. It's -- it's -- it's very favorable. I -- I negotiate DIP
8 financing every year for major corporations, Ms. Jarvis, and
9 getting this down to a LIBOR plus 300 basis points with a --
10 with a relatively small fee is really at the -- at the low end
11 of market.

12 Q. And did you try to get an unsecured loan to cover these
13 needs?

14 A. I have tried.

15 Q. Was that available?

16 A. No.

17 Q. Did you try to get a loan based on an administrative
18 expense claim, the granting of that administrative expense
19 claim?

20 A. Yes, and that was not available either.

21 Q. There is a reference to loans being primed. Are you aware
22 of any loans that would be primed as part of this interim
23 financing?

24 A. No.

25 Q. In fact, there were some potential equipment liens. Is

1 that equipment going to be the subject of the collateral for
2 this loan?

3 A. I don't believe it is.

4 Q. Okay. And in your business judgment, is this a reasonable
5 and necessary step in operating this business?

6 A. Yes.

7 MS. JARVIS: Okay. That's all I have, your Honor.

8 THE COURT: All right. Cross.

9 (Thereupon, the portion requested to be transcribed
10 was concluded at 03:57:55 p.m.)

11 (Thereupon, the portion requested to be transcribed
12 commenced at 04:38:27 p.m.)

13 THE COURT: Okay. Who wants to go next or do you
14 want to take a five-minute recess now or --

15 (Colloquy not on the record.)

16 MR. LEVINSON: Marc Levinson for the
17 Diversified Trust Fund. I just have a few questions.

18 THE COURT: All right.

19 (Colloquy not on the record.)

20 MR. LEVINSON: Ms. Carlyon graciously said she
21 represented the Funds, and a lot of her questions were my
22 questions, but we are different as Mr. Allison knows.

23 THE WITNESS: Yeah.

24 CROSS-EXAMINATION

25 BY MR. LEVINSON:

1 Q. First off, in terms of the 17 loans that would be funded
2 the next time perhaps, my client only has an interest in one;
3 isn't that right?

4 A. That's correct.

5 Q. Okay. The Diversified Trust Fund is in a different
6 position, is it not, than the First Trust Fund because of the
7 nature of its collateral?

8 A. Most assuredly, sir.

9 Q. Our loans as best as I can tell are at the nature of about
10 \$108,000,000 according to the schedules?

11 A. That's correct.

12 Q. And, yet, our biggest loans, 10-90, \$55,000,000, is
13 unsecured, is it not?

14 A. That's correct.

15 Q. And our second biggest loan, Epic Resorts, at about
16 \$19,000,000 is unsecured, is it not?

17 A. That's correct.

18 Q. And our third biggest loan, the Sheraton Hotel, \$7,000,000,
19 is unsecured, is it not?

20 A. That's correct.

21 Q. Okay. So if you do the simple math on that, that's 74 --
22 \$81,000,000 out of our 108 is unsecured.

23 So the lien that would be put on the assets of the
24 Diversified Trust Fund, the few remaining assets, would tie up
25 all of our few assets out of \$110,000,000 to perhaps fund this

1 one loan in which we have an interest of 19 percent?

2 A. Yes.

3 Q. Okay. Let me ask the question of if assuming the Court
4 were to say no today as to interim financing because the fees
5 were too high or because you really don't need the money and
6 the debtor-in-possession loan were teed up for the end of July,
7 it would include all three parts -- the warehousing part, the
8 17 loans part, and the operations part.

9 Would that really prejudice your operation over the next
10 four weeks if you could tell creditors that -- and vendors and
11 employees that the motion were teed up, that you had warm and
12 fuzzy feelings perhaps from the committees that it would be
13 approved at that time?

14 A. I think that the -- there's been an expectation of funding
15 for some period of time here and that I think that the -- the
16 -- my first -- my first reaction would be that I would be
17 losing employees during that period of time which would require
18 Mesirow to continue to add employees or -- or to hire temps to
19 -- to continue to do operations.

20 We -- we've already incurred that, so I think from an
21 employee standpoint there's -- there's that aspect to it.

22 The second aspect of -- of funding that I believe is
23 necessary ties in to credibility in terms of enforcement
24 actions.

25 We've been negotiating under the ability that, you know,

1 we're -- we'll go after foreclosure, and we've had some --
2 we've had some success.

3 (Colloquy not on the record.)

4 THE WITNESS: We've had -- I hesitate talking about
5 it because we're in very sensitive negotiations on a loan that
6 we thought we would have a substantial loss on that we think
7 that we're -- that we're a day or two away from monetizing.

8 (Colloquy not on the record.)

9 THE WITNESS: So to the extent that there could be
10 damage to the estate by not having funding in place, the answer
11 is, yeah. I -- I'm very concerned about not having enough
12 liquidity in place. That's why I put the motion on -- on hand.

13 And, frankly, from the time that I came in here, I started
14 negotiating with lenders to -- to find -- to find a lending
15 source to provide the incremental funding necessary to -- to
16 fund this business to protect the portfolio.

17 I -- I look at my duty as to protect the portfolio of all
18 the loans here, and, you know, part of the way the structure
19 works is that -- unfortunately, is that there's a -- this is a
20 very complex -- a very complex organization as you're well
21 aware, sir, and where we need to -- the two funds are -- are
22 the source of collateral along -- and, you know, what this
23 works towards is protecting the monetization of all the assets.

24 And so I think there needs to be a sorting out of how the
25 -- the -- the charges go at the end of the day, but what I've

1 been looking at putting a DIP in place to do is to protect the
2 value of this estate.

3 (Colloquy not on the record.)

4 BY MR. LEVINSON:

5 Q. Well, we've already established, right, that you would have
6 to employ ordinary-course professionals which you haven't yet
7 done.

8 A. That's true.

9 Q. And so if you needed an enforcement action let's say
10 against one of my Funds' few collateralized assets, don't you
11 feel you could call on my firm to do that because we already
12 know we're not getting paid until the end of July or longer?

13 A. Understood.

14 Q. I would hope that.

15 And in terms of the foreclosure costs, I guess you've
16 answered the question that you had enough to pay the
17 foreclosure costs in the meantime or the option to go to
18 another judge and ask for emergency financing if that was
19 necessary.

20 A. Yes, but I didn't think that going to another judge would
21 be part of the equation.

22 Q. Well, and obviously we'd all like to avoid that, but,
23 again, it is an option if it were necessary.

24 The final question is that when the Debtor filed its
25 emergency financing motion on Friday the 9th, had you spoken to

1 members of my committee about that DIP-financing request before
2 the motion was heard?

3 A. I'm -- I'm not quite sure. I spoke to so many different
4 people, I'm not quite sure who I spoke to.

5 Q. And --

6 A. And I'm not trying to be evasive, sir. I just -- I -- I
7 did -- I have had a number of direct -- a number of investors
8 call me, and I -- and I haven't identified them as to which
9 fund they're on.

10 (Colloquy not on the record.)

11 BY MR. LEVINSON:

12 Q. But when you said before that you had negotiated this with
13 the committee, that was really negotiations that started last
14 week, wasn't it?

15 A. Yes.

16 Q. And our goal -- if the motion were denied, we would
17 continue to negotiate with you and actually have a real
18 negotiation this time on a final DIP financing.

19 MR. LEVINSON: Thank you, your Honor.

20 THE COURT: Okay. Mr. Landis, you have just a few --
21 oh, Ms. Davis.

22 MS. DAVIS: I just have a couple.

23 (Colloquy not on the record.)

24 MS. DAVIS: I won't go over ground that other counsel
25 has gone over, but I do have some specific questions regarding

1 the Boise/Gowen loan.

2 Good afternoon, Mr. Allison.

3 CROSS-EXAMINATION

4 BY MS. DAVIS:

5 Q. You remember me as Laurel Davis, counsel for Scott Canepa
6 who is the --

7 A. Correct.

8 Q. -- largest single direct lender in the Boise/Gowen loan.

9 A. That's correct.

10 Q. And of that \$2,425,000 loan, Mr. Canepa holds \$1,250,000 of
11 the unpaid principal; is that correct?

12 A. Yes.

13 Q. I just have a couple of follow-up questions with respect to
14 some of your examination by Ms. Carlyon. I want to get back
15 into this question about priming liens and how the loans would
16 be secured, but I want to focus on it from the perspective of
17 Boise/Gowen.

18 So if her Honor grants your request to fund the \$125,000 on
19 the Boise/Gowen loan, how would that loan be documented?

20 A. It would be documented as a participation in -- in the --
21 it would be a pari passu participation with your client,
22 Mr. Canepa.

23 Q. So it would be a deed of trust with the same level of
24 priority as the existing deed of trust.

25 A. Yes.

1 Q. Now, I may be wrong, but I thought I reviewed something in
2 the proposed term sheet with a lender that required priming
3 liens as a condition of any funds advanced by the lender.

4 A. On this particular transaction what we've discussed is
5 having it on a pari passu basis.

6 Q. So just to be clear, the information that was provided in
7 your supplemental declaration --

8 A. That was with respect to the 17 loans on -- on the -- in --

9 Q. Right.

10 A. The 17 loans we're talking about.

11 Q. And if I could just finish my question, then. There was no
12 specific discussion of a difference regarding Boise/Gowen, but
13 there is, in fact, now a difference regarding Boise/Gowen?

14 A. What I understand it -- what we're -- what I understand our
15 intent would be is a pari passu, that we would come in on a --
16 on an equal basis with the existing lenders.

17 Q. And you've confirmed that with the DIP financier.

18 A. That's what our discussions have been.

19 Q. And do you have a modified term sheet that reflects that?

20 A. No, I -- we didn't -- the term sheet was contemplating the
21 17 loans, and -- and, frankly, we didn't -- I didn't -- under
22 the press of time, I didn't carve out that specific
23 transaction.

24 Q. Okay. Now, with respect to the Boise/Gowen project, that
25 was a one-year loan obtained in August of 2005, and it matures

1 in --

2 A. Yes.

3 Q. -- August of 2006; isn't that correct?

4 A. That's correct.

5 Q. Okay. And you previously testified that that was a project
6 under construction. What --

7 A. It was a project needing engineering for -- to finish it
8 out.

9 Q. Correct, and if I could just finish my question. It was
10 actually a land takedown loan, wasn't it?

11 A. Yes.

12 Q. Okay. So it's really not currently under construction as
13 we would normally consider construction, correct?

14 A. No, but it's -- in terms of building stuff, no, but it's --
15 it's getting it ready and getting it -- getting it to a
16 position where it can be -- be -- the land can be harvested.

17 MS. DAVIS: Okay. And one more area of questioning,
18 your Honor, and then I'll be finished.

19 BY MS. DAVIS:

20 Q. You testified during cross-examination by Ms. Carlyon that
21 in conjunction with the proposed advance on the Boise/Gowen
22 loan that you had not had any discussions with any of the
23 direct lenders regarding this?

24 A. I haven't had a discussion with -- I haven't had a
25 discussion with your client, no.

1 Q. Have you had a discussion with any of the 17 direct
2 lenders?

3 A. No, I have not, personally. I have not, personally.

4 Q. Not even Ms. Cangelosi.

5 A. I have with Ms. Cangelosi.

6 Q. Okay. Have you made any communication directly to the 17
7 direct lenders as required under paragraph 2-E of the
8 loan-servicing agreement?

9 A. No, I haven't yet.

10 Q. So what is your proposed course of action here? You're
11 going to get the DIP loan approved, then you're going to get
12 your business judgment for this loan approved, and then you're
13 going to communicate with the direct lenders?

14 A. Yes.

15 MS. DAVIS: Okay. No further questions, your Honor.

16 THE COURT: Okay.

17 MR. GORDON: Just one question, your Honor.

18 THE COURT: Um-h'm.

19 (Colloquy not on the record.)

20 CROSS-EXAMINATION

21 BY MR. GORDON:

22 Q. Is this pari passu deed of trust on the Boise/Gowen loan to
23 secure solely the 125 or is it to secure the entire interim DIP
24 loan?

25 A. The 125, Mr. Gordon.

1 Q. So it will be limited to the 125.

2 A. Yeah.

3 MR. GORDON: Thank you.

4 MS. CHUBB: Thank you, Mr. Allison. I represent a
5 group of --

6 THE COURT: Can you put one of the microphones --

7 THE COURT RECORDER: Thank you.

8 THE COURT: -- there. Thank you.

9 MS. CHUBB: Sorry.

10 THE WITNESS: Hi, Ms. Chubb. How are you?

11 MS. CHUBB: Good morning -- afternoon. Long
12 afternoon.

13 CROSS-EXAMINATION

14 BY MS. CHUBB:

15 Q. I was listening really carefully, and I understand that the
16 notes and deeds of trust will not be pledged as collateral.

17 I didn't understand whether the loan-servicing contracts of
18 the direct lenders would be pledged or whether just the fees
19 that you get out of those loans would be pledged.

20 A. It would be the assets of -- the assets of Commercial
21 Mortgage would -- would be the fees.

22 Q. Just the fees, not the contracts themselves.

23 A. The contracts would be pledged as well, but that's -- those
24 are the assets of Commercial Mortgage.

25 Q. So the contracts once they were pledged would be somebody

1 else's collateral, so it would be very difficult for those
2 loan-servicing contracts to be moved somewhere else.

3 A. I hadn't thought through that part.

4 Q. Do you think that would be the case?

5 A. Probably.

6 Q. Are you willing to pledge only the fees?

7 A. I'd have to talk to my lenders to see where they're at.

8 Q. Okay. And with respect to your strategy on each one of
9 these loans that's nonperforming, is the value that you're
10 going to find out about when you get the appraisals back
11 relevant to the strategy on each one of those loans?

12 A. Are we talking about the DIP financing or are we talking
13 about my workout strategy on -- on each of the loans?

14 Q. Either.

15 A. Well, I think that the workout strategy is going to vary on
16 each of the loans. I -- we've -- we've -- we've worked a
17 variety of different methods to monetize -- help monetize
18 transactions and negotiate a variety of different ways.

19 Q. But my question was is the value that you obtain from the
20 appraisal relevant to that?

21 A. Yes.

22 Q. And is there some reason why those values and the
23 information on the strategy isn't going to be available to the
24 direct lenders?

25 A. I think that the strategy of monetizing the loans when I'm

1 negotiating with a borrower is -- is something that I should
2 keep with -- with -- under my hat until we monetize them.

3 Q. Okay. Is there some reason why the appraisals wouldn't be
4 made available?

5 MS. JARVIS: Your Honor, I would object on --

6 MS. CHUBB: Well --

7 MS. JARVIS: -- relevancy grounds.

8 THE COURT: Well, I understand it may be an issue on
9 other grounds, but in this particular motion since we've got --

10 MS. CHUBB: Well, I thought you said --

11 THE COURT: -- to deal with these things --

12 MS. CHUBB: -- we were talking about all the motions
13 in the --

14 THE COURT: No. You're right.

15 MS. CHUBB: -- (indiscernible) motion.

16 THE COURT: We did talk about that. You're right,
17 but we've been -- what I meant by that was the motions that
18 relate to the monetary aspects as opposed to --

19 MS. CHUBB: Okay. I'm sorry.

20 THE COURT: And you're -- no, you're right, but
21 let's --

22 MS. CHUBB: I misunderstood.

23 THE COURT: -- focus on the monetary kind of motions.

24 MS. CHUBB: Okay. That's all I have on the monetary.

25 THE COURT: Okay.

1 MS. CHUBB: I just wanted to know --

2 THE COURT: And thank you for reminding me we have
3 that other issue pending before us --

4 MS. CHUBB: Okay.

5 THE COURT: -- which I don't know --

6 MS. CHUBB: Thank you.

7 THE COURT: -- when we'll get to.

8 MS. CHUBB: Okay. Thank you.

9 THE COURT: All right. Thank you.

10 MR. LANDIS: Good afternoon, Mr. Allison.

11 THE WITNESS: Good afternoon, Mr. Landis.

12 CROSS-EXAMINATION

13 BY MR. LANDIS:

14 Q. You prepared a loan summary, right?

15 A. Yes.

16 Q. And whenever there's a footnote No. 1 --

17 A. That's correct. That's --

18 Q. What does it mean?

19 A. Oh, I'm sorry. The -- the borrower is -- what I've tried
20 to flag and identify for -- for the world to see is which
21 transactions that we're looking to fund the borrower has some
22 sort of joint venture with Investment Partners.

23 Q. Who is Investment Partners, so the record's real clear?

24 A. The Investment Partners is the -- the principals in
25 Investment Partners are Mr. Hantges and Milanowski.

1 Q. So if these transactions are funded, there is a benefit
2 that would derive to Mr. Hantges and Milanowski in connection
3 with any of the loans where there's a footnote No. 1, right?

4 A. Potentially, yes.

5 Q. Potentially? Certainly, right?

6 A. Well, the first benefit I'm looking to do is to get the
7 loans paid off.

8 Q. Okay.

9 A. And they'll -- getting the loans paid off, the joint
10 venture is on USA -- on Investment Partners owning the equity
11 underneath the loan, not the loan itself.

12 Q. All right. Well, let me just give you an example real
13 fast. Boise/Gowen, you need \$125,000 to pay it off so it can
14 go to the next level, right?

15 A. Yes.

16 Q. That's a third-party takeout lender?

17 A. Yes.

18 Q. And so that Boise/Gowen loan is going to pay off, right?

19 A. Hopefully.

20 Q. And how much of the payoff goes to Mr. Hantges and
21 Milanowski through Investment Partners?

22 A. I believe -- well, it would be -- you would characterize it
23 hearsay, but I believe Mr. -- Mr. Bob Russell who's the owner
24 of the property has already bought out Mr. Hantges and
25 Milanowski --

1 Q. When --

2 A. -- in the Boise/Gowen transaction.

3 Q. When did that happen?

4 A. I've been -- I was just advised of it today.

5 Q. How much did they pay?

6 A. I think they -- he hasn't told me the -- I don't know the
7 number, but I -- he told me today that he was buying
8 Mr. Hantges and Milanowski out.

9 Q. So they're going to get their money out of this pretty
10 quick, huh? Is that right?

11 A. Yeah. They -- I -- again, I don't know what the number
12 would be.

13 Q. So anytime that there is money that goes into footnote 1
14 loan under this arrangement, USA Investment Partners is going
15 to get roughly half of the value of that project when it
16 monetizes, right?

17 A. Yes.

18 Q. Now, you say monetize. You mean liquidate, don't you? I
19 mean, the money -- it just turns into money instead of whatever
20 it is.

21 A. Well, what I'm looking at is monetizing the loan --

22 Q. Right.

23 A. -- that's here.

24 Q. And I'm asking what you mean when you say monetizing.

25 A. When the -- when the loan is paid off.

1 Q. So of the 17 loans, would it surprise you if \$6,967,372
2 worth of the proceeds are going to go into projects that
3 benefit Mr. Milanowski and Mr. Hantges?

4 A. Where they have 50 percent of the equity.

5 Q. On up to 75 percent, right?

6 A. My footnote actually says --

7 Q. Looking on the last page of your loan summary
8 (indiscernible).

9 A. Okay. Okay. That's on -- on one transaction. The
10 footnote -- the transactions that are footnoted on page 1 are
11 50 percent. There's no transactions footnoted on page 2, and
12 there's one transaction on page 3 that they have 75 percent of
13 the equity.

14 Q. So if you borrow money after having pledged the assets of
15 the funds in order to finance the 17 loans on your funding
16 summary so that they can be monetized, about 7,000,000 bucks
17 goes to Mr. Hantges and Milanowski; is that right?

18 MS. JARVIS: Your Honor, lack of foundation. We
19 don't have the -- I mean, the documents that determine
20 distribution are not in evidence, and this is pure speculation.

21 THE WITNESS: What I did was on --

22 THE COURT: I'll sustain the objection to the -- of
23 course, if you want to ask him what personal knowledge he has
24 of what he's reviewed.

25 MR. LANDIS: Well, that's exactly what I'll do.

1 BY MR. LANDIS:

2 Q. Why don't you tell the Court how much of that money you
3 understand would go to USA Investment Partners if they are in a
4 joint venture with the borrower at a rate of 50 percent.

5 A. That -- well, I'll -- I'll answer the question
6 specifically, and -- and it -- and it -- I can't answer your
7 question as you've addressed it, Mr. Landis.

8 What I can tell you is that in each of the transactions
9 when I've looked at them what's flagged in -- on my records at
10 the company is that Investment Partners owns an equity
11 interest.

12 What this doesn't say is how that equity interest is split
13 between -- how -- or how proceeds are split up amongst the --
14 the partners and the equity interest.

15 Q. Is that in any of the papers in any of the motions that are
16 pending before the Court right now (indiscernible)?

17 A. No.

18 MR. LANDIS: No more questions.

19 MR. CHARLES: I thought a benefit to Investment
20 Partners was a good thing. Let me see if I'm right.

21 CROSS-EXAMINATION

22 BY MR. CHARLES:

23 Q. Investment Partners also owes money to USA Commercial.

24 A. That's correct.

25 Q. One of the topics hopefully of today is to turn that into a

1 promissory note.

2 A. That's correct.

3 Q. For about?

4 A. \$57,000,000.

5 Q. Secured by?

6 A. Secured by the assets of Investment Partners.

7 Q. So if value flows through those transactions into
8 Investment Partners, do Hantges and Milanowski get it?

9 A. The -- what we've taken is the liens on several of these
10 projects to bring the money back into the estate of
11 Commercial Mortgage.

12 MR. CHARLES: Thanks.

13 THE COURT: You know, foreclosure is always a game of
14 chicken anyway, but let me understand, for example, about
15 Boise/Gowen.

16 If the 125,000 isn't lent or advanced -- whatever word you
17 may use -- then what happens vis a vis the project? The
18 project was just to buy land, right?

19 THE WITNESS: Yes, ma'am.

20 THE COURT: And that's -- the land has been bought.

21 THE WITNESS: That's correct, your Honor.

22 THE COURT: And why can't they get refinancing based
23 upon that now from somebody else?

24 THE WITNESS: Well, actually that's what I've
25 encouraged Mr. Russell to do is to find a third-party financier

1 to -- to make the 125,000.

2 Actually, I -- I asked Mr. Russell to make it himself, to
3 fund it. He's funding actually other projects at the moment
4 that we had -- that USA Commercial had committed to -- to fund
5 where -- where he's got mechanic's liens, and Mr. Russell has
6 indicated to me he's essentially out of cash, so --

7 THE COURT: So -- sorry.

8 THE WITNESS: So -- and -- and as Mr. Landis pointed
9 out, there's a taint in projects where USA Capital is out
10 there, and I think that Mr. Russell has looked pretty hard to
11 find other third-party financing to cover this hole, and he's
12 represented to me that he hasn't been able to do so.

13 THE COURT: So what --

14 MR. GORDON: Your Honor --

15 THE COURT: -- good would the --

16 MR. GORDON: Your Honor, I'm going to move to strike
17 any parts of that as hearsay. Mr. Russell is here.

18 THE COURT: Okay.

19 MR. GORDON: He could testify as to his ability of
20 refi'ing the property or the chances of it going --

21 THE COURT: All right.

22 MR. GORDON: -- to foreclosure.

23 THE COURT: So that's sustained.

24 So what is the 125,000? What is that going -- you said
25 it's going to be used for engineering. What does that

1 accomplish that makes the financing from some third party more
2 likely rather than less likely?

3 THE WITNESS: From what I've been told, it -- it's
4 the last part of the funds that are necessary to get the
5 project into a position where a third party potentially could
6 take it out.

7 THE COURT: Have you done any investigation to
8 understand whether or not a third party could take it out now
9 and just do a reduction in the price by 125,000?

10 THE WITNESS: What I've been told is that the
11 reduction in price would be greater than 125,000, your Honor.
12 It's --

13 THE COURT: So you haven't done any independent
14 investigation.

15 THE WITNESS: No.

16 THE COURT: Okay. Now, if we assume that the loan is
17 not made of 125,000, and August is two months from now, assume
18 they don't pay, you would start foreclosure, right?

19 THE WITNESS: Or I would be -- I would try to find --
20 I would encourage Mr. Russell to refinance the project as
21 opposed to foreclose upon it.

22 THE COURT: But if you foreclose, the point is they
23 would lose their equity, correct?

24 THE WITNESS: Yes. If I foreclosed, they would lose
25 their equity.

1 THE COURT: Okay. All right. Any questions in
2 response to mine?

3 MS. SCANN: Just one --

4 MR. GORDON: Yeah. Your Honor --

5 MS. SCANN: -- further response.

6 MR. GORDON: -- I had some questions based on what
7 the Court asked.

8 THE COURT: Okay. All right. Do you want to ask
9 your questions first or --

10 MS. SCANN: It's not really a question. On behalf of
11 Boise/Gowen, Mr. Russell is here. He's available to answer any
12 questions, but he's also willing to look for financing
13 elsewhere to fund this in another way.

14 THE COURT: Okay.

15 MS. SCANN: So --

16 MR. GORDON: And these were generated by the Court's
17 questions.

18 THE COURT: Yes.

19 CROSS-EXAMINATION

20 BY MR. GORDON:

21 Q. Mr. Allison, does USA Capital Mortgage get any fees from
22 the 125,000 originating (indiscernible)?

23 A. The 125, I don't believe we get -- we earn -- I think if we
24 earn anything it's just the incremental fee on -- from getting
25 this transaction to closure.

1 Q. So you don't get an origination fee.

2 A. No.

3 Q. Thank you.

4 And No. 2 is the Court asked you about foreclosure, but
5 there will be now two deeds of trust on this property, correct?

6 A. Yes.

7 Q. And --

8 THE COURT: No, I said if the loan wasn't given.

9 MR. GORDON: If the loan -- okay. That's fine.

10 Thank you, your Honor. I missed that.

11 THE COURT: All right. Okay. Redirect.

12 REDIRECT EXAMINATION

13 BY MS. JARVIS:

14 Q. Mr. Allison, is Commercial Mortgage currently receiving any
15 servicing fees from First Trust Deed Fund?

16 A. No.

17 Q. Is Commercial Mortgage currently receiving any management
18 fee from First Trust Deed Fund?

19 A. No.

20 Q. And why is that?

21 A. Because they're out of cash.

22 Q. In fact, let me just refer you to I think Exhibit 1. This
23 is the budget. Does this represent on the budget the current
24 cash situation of First Trust Deed Fund?

25 A. That's correct.

1 Q. So is the Debtor currently taking enforcement actions on
2 behalf of First Trust Deed Fund?

3 A. Yes.

4 Q. Is the Debtor currently expending other -- both time and
5 effort in expenditures on behalf of First Trust Deed Fund?

6 A. Yes, most assuredly.

7 Q. And how are those being paid for?

8 A. They're -- they're being absorbed by the professionals.

9 Q. Are they also being paid for by servicing fees from other
10 lenders?

11 A. Yes.

12 Q. And is this an example of the situation we described before
13 where servicing fees are not currently being collected but for
14 which you are seeking upfront ability to fund them pending
15 collection?

16 A. Yes.

17 Q. Do you currently have any proposal on the 17 unfunded
18 commitments to take to lenders?

19 A. I'm sorry, Ms. Jarvis. I --

20 Q. Do you currently have a firm commitment to take to the
21 lenders on any of these 17 --

22 A. No, I do not.

23 Q. -- unfunded commitments?

24 If this, the interim financing, is not approved, will you
25 be able to get a commitment from CapSource to take to lenders?

1 A. No.

2 Q. When you had described your intent in the process dealing
3 with these unfunded commitments, do you intend to wait until
4 you have a proposal before you take that to the lenders?

5 A. Yes.

6 Q. And, in fact, you would do further due diligence before you
7 did that.

8 A. That's correct.

9 Q. Okay. You talked about hiring ordinary-course
10 professionals. Do you feel it is necessary to go forward with
11 doing this at this point in time?

12 A. Yes, I do, and -- and, frankly, one of the things I wanted
13 to be able to do is show them through the DIP that they have
14 the ability to get paid.

15 You know, as we look at, you know, the estate having a cash
16 burn, I wanted to make sure that if we hired professionals to
17 do things that this estate had the ability to pay them.

18 Q. So do you believe it will be difficult then to hire
19 ordinary-course professionals without a DIP, at least an
20 interim DIP in place?

21 A. Yes.

22 Q. Without an interim DIP and the ability to go forward to try
23 to fund these unfunded commitments, will there be delay in
24 trying to deal with these unfunded commitments?

25 A. Yes.

1 Q. And what will be the cost of that delay in your opinion?

2 A. I believe that we'll be triggering litigation and
3 continuing damages from the builders that are out there that
4 are -- that are -- that were relying on US -- that -- that took
5 a loan down relying upon USA Commercial Mortgage to -- to fund
6 the commitments that they have outstanding.

7 Q. And even if you prevail in this litigation, will there be a
8 cost to the estate?

9 A. Yes.

10 Q. And what will that be?

11 A. I think that we'll continue to -- we'll have -- we'll --
12 we'll have loans that are out there that won't pay out at par.
13 We'll have lost interest and lost principal.

14 Q. The term sheet, was it attached to the motion that you sent
15 out of this hearing?

16 A. I believe it was, yes.

17 Q. Let me refer you to page -- let's see. What is it? Page 4
18 of the term sheet.

19 MS. CARLYON: I'm sorry. Is that an insert to the
20 motion?

21 MS. JARVIS: Yes, it is.

22 BY MS. JARVIS:

23 Q. You were asked whether you gave notice in the motion of the
24 potential lien, priming lien, and superpriority claim. Was
25 this attached to the motion to give notice of that --

1 A. Yes.

2 Q. -- issue?

3 Let me go back to the funding summary that everyone has
4 been referring to which we've marked as Exhibit 2. There are
5 17 loans that you discussed that you would seek funding for.
6 Of these 17 loans, how many of them would you seek funding for
7 within this next month?

8 A. I would be walking through the funding needs with all --
9 for all of them with our lenders and with -- with the
10 committees.

11 Q. Right. And would you seek the approval -- is part of your
12 agreement with the committees that you would not seek funding
13 for this to go forward unless they had given you your approval?

14 A. That's what I already agreed -- that's what I discussed
15 with the committees last week.

16 Q. Maybe just to give an example of one of the issues with
17 respect to the funding and the importance of this, maybe you
18 could walk me through the Rio Rancho Executive Plaza, LLC.

19 A. Sure. Rio Rancho is a project in -- in New Mexico, and
20 Rio Rancho is very -- is under construction at the moment.
21 Construction would -- the risk to not funding include
22 construction stopping.

23 Rio Rancho has already leased out Phase One and Phase Two,
24 and it has real -- it has tenants in it that if this
25 construction stops they would -- the -- the -- the builder --

1 and I think it's Mr. Russell again -- would potentially lose
2 his tenants.

3 So I think that there's -- there's -- if construction stops
4 here, it's not --

5 MS. CARLYON: Objection. Hearsay.

6 THE COURT: What was basing your knowledge? Did you
7 visit this?

8 THE WITNESS: I have not visited the site, but
9 I've --

10 THE COURT: Okay.

11 THE WITNESS: -- interviewed --

12 MS. JARVIS: Your Honor, he's --

13 THE WITNESS: -- Mr. Russell.

14 THE COURT: Okay.

15 MS. JARVIS: Yeah. He's explaining his rationale as
16 to why he wants to move forward immediately.

17 THE WITNESS: And in my --

18 MS. CARLYON: Wait. Just --

19 THE COURT: I'll sustain the objection.

20 MS. CARLYON: Thank you.

21 MS. SCANN: Your Honor, Mr. Russell is present in the
22 courtroom.

23 THE COURT RECORDER: I'm sorry, Counsel.

24 THE COURT: Okay.

25 UNIDENTIFIED SPEAKER: Yeah.

1 THE COURT RECORDER: I'm not able to pick you up from
2 back there.

3 (Colloquy not on the record.)

4 BY MS. JARVIS:

5 Q. Do you believe a --

6 MS. SCANN: Susan Scann on behalf of Boise/Gowen. I
7 just made the comment that Mr. Russell is present in the
8 courtroom and available for questions.

9 BY MS. JARVIS:

10 Q. Do you believe a 30-day delay on funding this project would
11 cause potential damage to the collateral that is currently
12 securing the loan brokered by Commercial Mortgage --

13 A. Yes.

14 Q. -- and serviced?

15 A. These are construction loans that are typically 12 month in
16 -- in length, and essentially by delaying it -- you know, this
17 loan has been delayed substantially already, and I think that
18 further delay in doing this could have disastrous effects on --
19 on the -- on -- on what Mr. Russell has done to lease out this
20 facility.

21 Q. And have you tried to obtain funding outside of the DIP
22 financing for these projects or -- yeah, for these projects?

23 A. Yes.

24 Q. And is that available?

25 A. It isn't.

1 Q. You were asked about what you thought from the budget was
2 necessary to meet immediate and irreparable injury to the
3 estate with respect to asking for this interim financing.

4 Would you explain what there would be outside the budget
5 that you believe would demonstrate immediate and irreparable
6 injury to the estate if this interim financing is not granted.

7 A. There are things that are -- that are -- obviously, this
8 case has been one of unforeseen issues, Ms. Jarvis, and -- and
9 one of the things I've been trying to protect in this case is
10 the appearance of having enough funding to -- having enough
11 funding to make sure that the -- the debtor stays in
12 operations, that the debtor is able to -- to take enforcement
13 actions as I said to collect loans, to keep employees in place,
14 and to -- and to sort out the -- this estate, and -- and one of
15 the things that's unknown at this time is if there could be a
16 dramatic slowdown in payments to this estate in terms of
17 loan-servicing fees by -- by the -- by the borrowers.

18 Q. And if there is a slowdown, a more substantial slowdown
19 because of the lack of DIP financing, will that then affect the
20 budget as far as a need for financing within the next 30 days?

21 A. Yes.

22 Q. Do you believe that you have negotiated a very favorable
23 deal with --

24 MS. CARLYON: Objection. Leading.

25 BY MS. JARVIS:

1 Q. -- CapitalSource?

2 THE COURT: Please, don't lead.

3 MS. JARVIS: Okay.

4 THE WITNESS: I believe I -- I have shopped this
5 financing --

6 THE COURT: Oh, well.

7 THE WITNESS: -- from the -- I'm sorry.

8 MS. JARVIS: Sorry.

9 MS. CARLYON: Duplicative.

10 THE WITNESS: I'm sorry, your Honor.

11 MS. CARLYON: Exceeds the scope of redirect.

12 MS. JARVIS: Yeah.

13 THE WITNESS: Trying --

14 THE COURT: Let's just go on.

15 THE WITNESS: -- to be responsive, I've shopped this
16 transaction from the time I've come onboard prior to -- prior
17 to filing a bankruptcy in terms of looking at lenders and
18 looking at the loan structures that -- that make sense to -- to
19 finance this company.

20 I believe that this is the -- from an economic standpoint
21 of fees and costs, this is the lowest-cost transaction that I
22 have a hard proposal on.

23 BY MS. JARVIS:

24 Q. Has CapitalSource done due diligence to date?

25 A. Yes. They've done it on their own nickel.

1 Q. And have they done in your view substantial due diligence?

2 A. Yes. Our team has worked with them. We provided them
3 substantial information. I believe that they're in a position
4 where they could have this loan approved and can close it.

5 Q. If this interim financing is not granted today, do you
6 believe that CapitalSource will continue to move forward on
7 this transaction?

8 A. I don't believe --

9 MS. CARLYON: Objection.

10 THE WITNESS: -- that they --

11 MS. CARLYON: Calls for speculation --

12 THE COURT: Sustained.

13 MS. CARLYON: -- or hearsay.

14 BY MS. JARVIS:

15 Q. Will the lack of DIP financing affect your decisions with
16 respect to enforcement actions that you will take within the --

17 MS. CARLYON: Objection.

18 BY MS. JARVIS:

19 Q. -- next 30 days?

20 MS. CARLYON: Leading.

21 THE COURT: Let's just --

22 MS. JARVIS: All right. Yeah.

23 THE COURT: Please don't ask --

24 MS. JARVIS: Okay.

25 THE COURT: -- leading questions, but, you know, come

1 on.

2 MS. JARVIS: All right.

3 THE COURT: Try not to do that again.

4 MS. JARVIS: All right.

5 BY MS. JARVIS:

6 Q. How will this affect enforcement actions taken within the
7 next 30 days if the DIP financing is not allowed?

8 A. I'm only going to spend money that I know that I have --

9 Q. Okay.

10 A. -- Ms. Jarvis, and I'll be making decisions on enforcement
11 actions based upon what liquidity I have in the budget.

12 MS. JARVIS: That's all the questions I have.

13 THE COURT: Don't every one of the trust deeds
14 provide that cost of foreclosure are taken first from the
15 property?

16 THE WITNESS: Sure. Yes, they do, your Honor. The
17 problem is is that you don't get the money until you -- until
18 you've monetized the assets. So between the time I foreclose,
19 the cost to carry it, and then I get my money when I -- when I
20 sell it.

21 So when I'm trying to finance this, the money necessary to
22 go from the first step to when I monetize it because that's
23 when I get my -- that's when I get my money out of the deal.

24 THE COURT: But the costs will ultimately come from
25 the property, correct?

1 THE WITNESS: Correct.

2 THE COURT: Okay. You said you're losing employees.
3 What kind of employees are you talking about?

4 THE WITNESS: So far I've lost the -- the -- the most
5 senior person I've lost is the -- the person in charge of loan
6 servicing which I have then had to put one of my people in to
7 fill in the gap for him.

8 THE COURT: So you're still going to have the same
9 costs regardless, right?

10 THE WITNESS: Well, having one of my people do the
11 loan-servicing cost at his rates is a bit more expensive than
12 having --

13 THE COURT: Have you attempted to hire anybody in the
14 local economy?

15 THE WITNESS: Not in the past week I haven't. He
16 resigned last week.

17 THE COURT: Okay. And why would you not seek -- oh,
18 I'm sorry. For example, let's look at Gerrans Corporation
19 (phonetic). It's a \$275,000 loan. You have your appraisal
20 back. Is the property in the condition it's in worth less than
21 \$275,000?

22 THE WITNESS: I'm sorry. Which loan, your Honor?

23 THE COURT: J. Gerran's Corporation (phonetic).

24 THE WITNESS: Yes.

25 THE COURT: Third. You have the appraisal back,

1 obviously.

2 THE WITNESS: Right.

3 THE COURT: Is the property worth less than 275,000
4 as it stands?

5 THE WITNESS: No. I think it's worth a bit more than
6 that.

7 THE COURT: So why do you want to put more money in
8 if you've got enough to pay the lenders on this loan?

9 THE WITNESS: Again, what I'm trying to look at on
10 each of these loans is the -- this one in engineering rezoning
11 which would if it's not completed would have a negative impact
12 on the property.

13 All I'm trying to do is take each of these transactions and
14 look at what the values come out at.

15 THE COURT: But if the property is now worth more
16 than what you made the loan for, you're going to come out whole
17 on that loan, right?

18 THE WITNESS: Right.

19 THE COURT: Well, the lenders will.

20 THE WITNESS: The lenders hopefully will. Yes.

21 THE COURT: Yeah. Now, with respect to each of these
22 properties, do you believe that the values as is are worth
23 significantly less, about the same, or more than the loan?

24 THE WITNESS: Less.

25 THE COURT: Significantly less or just less, some

1 less?

2 THE WITNESS: It depends on each transaction, but
3 less than what the loan is.

4 THE COURT: Now, for example, on the Boise/Gowen. Do
5 you believe -- and I maybe asked this, and I apologize. Do you
6 believe the property as is is worth less than the loan even
7 without the engineering?

8 THE WITNESS: Yes.

9 THE COURT: How much less?

10 THE WITNESS: Oh. It --

11 THE COURT: About.

12 THE WITNESS: I -- I would think it's probably about
13 \$250,000 less 10 percent of the loan balance.

14 THE COURT: Okay. All right. Any questions in
15 response to mine?

16 Oh, I'm sorry. One more question I forgot. Why would you
17 not seek -- if you're making a loan on a specific project, for
18 example, Boise/Gowen, why would you not seek to have the lien
19 be a senior lien on the property?

20 (Colloquy not on the record.)

21 THE COURT: If it's only benefitting that group, why
22 not? Why have you chosen to make it pari passu since you
23 haven't even talked to them anyway as opposed to a priming
24 lien?

25 THE WITNESS: Your Honor, on this transaction what I

1 was trying to do for speed was to do it on a -- on a pari passu
2 basis --

3 THE COURT: Okay.

4 THE WITNESS: -- in order to move it forward.

5 THE COURT: Now, with respect to the other loans, for
6 example, Gateway Stone. I'm just picking loans out of the air.
7 Why -- and I don't even know who the -- is that a direct lender
8 or is that a fund loan?

9 THE WITNESS: Gateway is 92 percent held by the
10 direct lenders.

11 THE COURT: Okay. So, in any case, there are direct
12 lenders. So why would that loan not be made available with at
13 least a pari passu or a priming loan?

14 THE WITNESS: I think what we have to do in each --
15 each of these loans is -- what we've looked at as a priming
16 basis on each of the loans, we need to go back and talk -- once
17 -- first of all, we need to go through each of these loans to
18 get to a consensus with the committees to go ahead and fund
19 them, and then -- after we get that consensus put in place, to
20 go and talk about the loan structure.

21 THE COURT: Okay.

22 RECROSS-EXAMINATION

23 BY MS. CARLYON:

24 Q. Now, with regard to your efforts to obtain this funding
25 elsewhere --

1 THE COURT RECORDER: Counsel, could you move the
2 microphone back down towards you. Thank you.

3 MS. JARVIS: Your Honor --

4 MS. CARLYON: I'm sorry.

5 MS. JARVIS: Your Honor, I mean, I think if she wants
6 to cross-examine with respect to your questions, that's okay,
7 but if we're going to go back --

8 THE COURT: No. This is --

9 MS. JARVIS: -- to my questions --

10 THE COURT: I assume this is --

11 MS. JARVIS: -- we're now doing a re-re- --

12 THE COURT: -- with respect my questions.

13 MS. CARLYON: But he --

14 MS. JARVIS: -- re-recross.

15 MS. CARLYON: -- testified about this issue in
16 response to the Court's question.

17 I do have one question I would like to ask in recross in
18 response to an issue raised by Ms. Jarvis. When I ask it, if
19 there's an objection, we'll deal with it.

20 BY MS. CARLYON:

21 Q. With regard to your efforts to shop these new loans or
22 these additional loans out, do you recall prior to filing this
23 motion we had a committee meeting, and I suggested to you that
24 you package up all of the related loans, the existing loans,
25 and the new financing, and you present them to the debtor's

1 local competitors such as Vista Group or Vestin to see if they
2 would just take out the loans and that you then go to the
3 investors and ask them if they would rather do that?

4 A. I -- I remember your comment.

5 Q. Okay. And is it accurate to say you haven't done that?

6 A. No, I haven't.

7 Q. Okay. You told me that the Funds -- you told Ms. Jarvis
8 the Funds are not currently paying the servicing fees --

9 MS. JARVIS: Your Honor, now we're --

10 BY MS. CARLYON:

11 Q. -- because they are --

12 MS. JARVIS: Your --

13 BY MS. CARLYON:

14 Q. -- out of cash --

15 MS. JARVIS: Your Honor, I would object because now
16 we're going back to take my redirect --

17 MS. CARLYON: It's --

18 MS. JARVIS: -- and doing recross. She's --

19 MS. CARLYON: It's one question --

20 MS. JARVIS: -- referring to one of my comments about
21 it. I think this is improper.

22 THE COURT: I'll allow it.

23 BY MS. CARLYON:

24 Q. And because the Funds were out of cash.

25 Is it accurate to say that the Funds would have cash if you

1 had brought today the motion to distribute the interest and
2 principal you've received to the investors instead of this
3 financing motion?

4 A. The -- there -- there -- what we've collected in cash today
5 would be distributed. I -- what we're working on is making --

6 Q. And --

7 A. -- sure that we have an agreement with all the committees
8 including yours as to how those funds are distributed.

9 Q. And if those funds were let go of, you would be able to pay
10 from those funds the servicing fees, right?

11 A. I'm sorry. You're -- you're --

12 Q. You've collected principal and interest on account of
13 First Trust Deed being a lender in some loans, right?

14 A. And others.

15 Q. Right. And you're holding that, right?

16 A. Yes.

17 Q. And if you ask this Court for permission to release that,
18 one of the things that would be released is the servicing fees,
19 right?

20 A. What would be released would be the -- the principal and
21 interest that we've collected.

22 Q. And when you collect the interest, are you taking the
23 servicing fees out before you put it in the separate account?

24 A. When I collect interest on current accounts, I'm taking out
25 the servicing fee. Yes.

1 Q. Okay. So the Funds have been paying --

2 A. My loan --

3 Q. -- the servicing fees.

4 A. My -- my loan-servicing fee. There's a -- there's a
5 servicing fee that's due from -- from First Trust Deed Fund.
6 First Trust Deed Fund has no cash to pay that.

7 Q. You're saying the separate management fee.

8 A. That's correct.

9 Q. And the reason that there's no money to pay the management
10 fee is that you haven't released to First Trust Deed Fund that
11 principal and interest that you've collected.

12 A. That's right. I have not released it to any of the
13 funds -- any --

14 Q. Filing --

15 A. -- any of the --

16 Q. -- that motion --

17 A. -- any of the investors.

18 THE COURT: We got the point.

19 MS. CARLYON: Thank you.

20 THE COURT: All right. Let's take a recess. We'll
21 have very brief argument.

22 We asked GSA to keep the air conditioning on. They
23 listened to us like they always do. I believe it's turned off,
24 so we're not going to last --

25 THE CLERK: No, I think it's still on.

1 THE COURT: I think they turned it off, don't you?

2 (Colloquy not on the record.)

3 THE CLERK: No. They --

4 THE COURT: No?

5 THE CLERK: They called earlier (indiscernible).

6 THE COURT: I know, but we did what we're supposed to
7 do.

8 THE CLERK: (Indiscernible) --

9 THE COURT: I know nobody wants to come back
10 tomorrow. We'll finish this. We'll do the motion to forbear.
11 I mean, we'll do the motion on the Canepa aspect --

12 UNIDENTIFIED SPEAKER: Well --

13 MS. DAVIS: Your Honor, before we go any further, in
14 communication with Mr. Russell and his counsel, Mr. Russell
15 wanted me to communicate to the Court and counsel that he is no
16 longer interested in the \$125,000 advance, and he would ask
17 that that be taken off calendar.

18 THE COURT: Oh.

19 MS. SCANN: That's small enough that that's something
20 that could be managed, but we have the Franklin Stratford one
21 that's in. That's absolutely essential.

22 MS. JARVIS: And that needs to go forward today.

23 MS. SCANN: Right.

24 THE COURT: Okay.

25 MS. SCANN: And it's brief because --

1 THE COURT: Well --

2 MS. SCANN: -- we've already vetted everybody with
3 that.

4 THE COURT: Oh. Okay. All right.

5 So we'll take about a five-minute break, and what I can do
6 just to the extent we don't finish, unfortunately, I maybe have
7 two hours tomorrow between 10:30 and 2:00, so I hope we'll
8 finish. I think I'd kind of like to quit at 6:00.

9 MS. SCANN: Your Honor, may we start when we come
10 back --

11 THE COURT: Yes.

12 MS. SCANN: -- with the Franklin Stratford because it
13 doesn't depend on the DIP financing, so --

14 (Colloquy not on the record.)

15 THE COURT: Well, the only thing is I was going to
16 make a ruling (indiscernible) have argument on it --

17 (Colloquy not on the record.)

18 MS. SCANN: You were going to --

19 THE COURT: -- but --

20 MS. SCANN: Oh, just have --

21 THE COURT: Oh. Franklin Stratford everybody's happy
22 about.

23 (Colloquy not on the record.)

24 MS. SCANN: Yeah.

25 THE COURT: Okay.

1 MS. SCANN: Everybody is --

2 (Colloquy not on the record.)

3 THE COURT: All right.

4 MS. SCANN: The people who --

5 THE COURT: So we'll take it --

6 MS. SCANN: -- are involved --

7 THE COURT: -- when we come back.

8 MS. SCANN: Yeah.

9 MR. GOCHNOUR: I'm sorry, your Honor. Wade Gochnour
10 on behalf of Liberty Bank.

11 Before we go, I was only here for the Investment Partners
12 motion.

13 (Colloquy not on the record.)

14 THE COURT RECORDER: I'm sorry. We're still on the
15 record, and we're getting --

16 MR. GOCHNOUR: Yeah.

17 THE COURT RECORDER: -- all the conversation.

18 MR. GOCHNOUR: I'm sorry. For the Investment
19 Partners motion. I'm trying to figure out is that going to be
20 heard today? Do I need to come back another day?

21 THE COURT: Well --

22 MR. GOCHNOUR: I'm just trying to figure out where
23 things are going, your Honor.

24 THE COURT: And I can't tell you what is left to go.
25 Talk to counsel. I'd like to try and leave at 6:00 and come

1 back tomorrow, but those people who can't, can't, so --

2 MS. CARLYON: We'll discuss it during the break.

3 THE COURT: Just talk among yourselves for a couple
4 of minutes.

5 UNIDENTIFIED SPEAKER: Yeah.

6 THE COURT: I don't think we'll have any air
7 conditioning. I think they've shut it off on us, so it's going
8 to get awful in here in about five minutes.

9 THE CLERK: All rise.

10 (Court recessed at 05:23:17 p.m.)

11 (Court reconvened at 05:31:11 p.m.)

12 THE CLERK: Bankruptcy court is now in session.

13 THE COURT: Be seated.

14 Gayle (phonetic) said that GSA's supposed to get it fixed.
15 Okay.

16 Let's go ahead then and -- do we need any additional
17 testimony in those other motions or can we just argue those
18 motions together, the forbear, the --

19 MS. CARLYON: The forbearance I think we've resolved
20 most of it.

21 MR. SCHWARTZER: Your Honor, with regard to the
22 forbear, I think everybody has withdrawn -- this is
23 Lenard Schwartzer on behalf of the debtor.

24 There are several things. Boise/Gowen was the first one.
25 That's been withdrawn because Mr. Russell understands this is

1 more trouble than it's worth I guess.

2 The next one is the Stratford. In Stratford, the debtor is
3 in a construction project. There's an additional
4 two-and-a-half acres that's subject to the deed of trust that
5 is up for sale, and there's a sales contract to sell it.

6 And rather than loaning additional money to this lender,
7 what we're proposing is that the sale be completed and that the
8 lender use the proceeds from the sale, this additional
9 collateral, to fund the completion of the project.

10 This makes sense, obviously, from a financial point of view
11 because, otherwise, we wind up in the situation of a project
12 that's incomplete, unfunded. This way we'll have a project
13 that the building will be completed, and there won't be
14 mechanic's liens on it.

15 THE COURT: Now, were all the lenders on that loan
16 noticed --

17 MR. SCHWARTZER: They all -- my --

18 THE COURT: -- of that motion?

19 MR. SCHWARTZER: They all received the notice that
20 was mailed out on the 14th notifying them of the hearing of the
21 motion to forbear.

22 THE COURT: Okay.

23 (Colloquy not on the record.)

24 MR. SCHWARTZER: And we've confirmed with some
25 counsel here that they received seven or eight copies because

1 my understanding the BMC Group sent it out to the lenders
2 involved in these specific loans. It was a total of something
3 like 790 people. Right at this point in time, there are no
4 objections to the Franklin Stratford deal.

5 The other thing, the other matter that there is is called
6 the Amesbury project. Amesbury is a multiple-building
7 project.

8 On one of the buildings which is completed there are three
9 condominiums that are going to be sold for what appears to be
10 the full fair-market value, and the net proceeds of the sale
11 will be paid -- the entire net proceeds of the sale will be
12 paid to USA Commercial Mortgage on behalf of the individual
13 direct lenders.

14 So we're getting all the net proceeds. What's not being
15 paid when the sale comes out is I guess the broker's fee and
16 the escrow closing costs.

17 And we need authority to sign a release because this loan
18 is in default, but we're still better off -- the business
19 judgment of the debtor is that we're still better off getting
20 the full net proceeds from the sale on these three condominiums
21 than keeping them together and --

22 THE COURT: And the same question.

23 MR. SCHWARTZER: -- foreclosing them.

24 THE COURT: The direct lenders on this loan have also
25 been noticed.

1 MR. SCHWARTZER: Yes, your Honor.

2 THE COURT: Okay.

3 MR. SCHWARTZER: They were also part of that notice.

4 The last matter, your Honor, is with regard to HFA. HFA
5 paid off four loans, and as part of the deal they -- not a
6 condition. They paid off three or four loans completely that
7 were in default.

8 They have additional loans that the debtor agreed that they
9 would not seek foreclosure before December 31st, at the end of
10 the year; in other words, basically, an extension of the loans.

11 We still have objection to that. What we suggest with
12 regard to that is that part of the motion be continued to
13 July 25th.

14 THE COURT: Okay.

15 MR. SCHWARTZER: So, basically, the two parts there
16 are there's no objection, so we would like granted. One part's
17 withdrawn, and one part is continued to July 25th.

18 THE COURT: All right. Comments?

19 MS. SCANN: Your Honor, on behalf of Franklin
20 Stratford, Susan Williams Scann.

21 I just wanted to add this is urgent for this project
22 because the general contractor has only been paid the \$100,000
23 that my client paid him since the last loan draw was submitted
24 in -- well, I guess it's been since March. The April draw
25 wasn't on it. He's threatened to walk off.

1 My client does have -- is in the process of selling one of
2 the warehouses, so if this thing doesn't get complete, it's not
3 only a disaster for my client but for the investors, too, and
4 we need it tonight because the escrow is just waiting for the
5 Court's --

6 THE COURT: Okay.

7 MS. SCANN: -- approval.

8 MR. GORDON: Your Honor, the direct lenders take no
9 position with regard to the Franklin Stratford. That's not our
10 loan. That's the Funds' loans.

11 With regard to Boise/Gowen, obviously, that one now goes
12 away. With regard to HFAH loans, we're fine with deferring
13 that to the 25th. We do have problems with that.

14 With regard to the release of the three condominiums, I
15 appreciate the fact that notice was sent out. Our opposition
16 to that --

17 THE COURT: These are the Amesbury.

18 MR. GORDON: Amesbury. Sorry.

19 Our opposition to that was softer than obviously the HFAH
20 because we did have very clear objections. I appreciate what
21 the debtor is saying. We'd like to cooperate in that regard,
22 but we don't want to get down the slippery slope.

23 The notice says release three condominiums in exchange for
24 the net sales price for sales that are full-value sales. It
25 doesn't say this is the last three elements of collateral, as a

1 result of their being released, there will be a deficiency for
2 which there is no further collateral available. I have a
3 problem with that.

4 What I would suggest is we do the following, and that is --
5 is that the notice went out. I appreciate it, but
6 (indiscernible) like to have a negative notice going out that,
7 you know, this order was approved subject to an additional
8 notice going out to the 398.

9 I just don't want to get into the position where this type
10 of notice binds them, and they come back in and say we didn't
11 know all the particulars.

12 I appreciate where the debtor is. Again, our problems with
13 that was basically factual in addition to the notice problem,
14 and we did not have the access to this notice or had been told
15 it was served on all 3700 or all the interested parties.

16 So we sympathize with the debtor, but we don't want to
17 establish a precedent here that these type of short-end notices
18 all of a sudden comply with the loan-servicing agreement which
19 says, you know, we must hear from you.

20 UNIDENTIFIED SPEAKER: Hello?

21 THE COURT: Okay.

22 MR. LANDIS: And, Judge, the United States Trustee
23 generally doesn't have a problem with what's been outlined just
24 walking through it right quickly so that we're all clear.

25 The request for release of excess collateral for the

1 Franklin Stratford loan as I understand it's a carve-out sale
2 and reapplying the sales proceeds into the project.

3 With respect to the additional 125,000 from Boise/Gowen, as
4 I understand it it's off the table. That's fine.

5 We're going to -- with respect to the three Amesbury loan
6 condominium units, as long as the order provides for how the
7 proceeds are going to be addressed if there is an order we
8 might be comfortable there, and we would reserve all rights
9 obviously as we've discussed with respect to the HFA loans.

10 There's only one thing left, and that is we don't even need
11 an order. I would suggest that the Court doesn't enter an
12 order.

13 The debtors have suggested to you that this stuff is
14 supposed to be ordinary course. Mr. Allison has a \$500,000
15 insurance policy premium that's already been paid. If these
16 stand up, great. If they don't, tough. I don't think you need
17 to enter an order if you agree that they're ordinary course.

18 That's our two-cents' worth on these issues, your Honor.

19 THE COURT: Okay. On Amesbury --

20 MR. SCHWARTZER: Your --

21 THE COURT: -- so are you -- I'm sorry.

22 MR. SCHWARTZER: Your Honor, can I just correct one
23 thing?

24 THE COURT: Um-h'm.

25 MR. SCHWARTZER: It's not the last collateral. This

1 is the last units in Phase One. There apparently is a
2 Phase Two. I just want to make clear that --

3 THE COURT: Okay. So this is not the last collateral
4 because it does say issue partial releases.

5 MR. SCHWARTZER: Yes.

6 (Colloquy not on the record.)

7 THE COURT: And these indeed is partial releases.
8 This would not release --

9 MR. SCHWARTZER: And my --

10 THE COURT: -- all the collateral.

11 MR. SCHWARTZER: And my understanding -- and it's
12 basically from reading what was filed, your Honor -- is that
13 this is the last three units in Phase One, but we do agree that
14 the remaining collateral appears to be insufficient to pay the
15 balance of the loan.

16 THE COURT: Why didn't you say that?

17 MR. SCHWARTZER: Because based upon the appraisals
18 that we had which are a year old, the remaining condominiums in
19 Phase -- this is a multiple-building condominium project, and
20 they have outstanding at this point in time \$18,000,000, and
21 they're approximately \$5,000,000 behind in interest payments.

22 This is a bad project. We're not saying this is a good
23 deal. What we're saying, this is a good deal under the
24 circumstances that we're better off with getting the full
25 fair-market value for these last three remaining condos in

1 Phase One than having to foreclose on three more pieces of
2 property and not having the --

3 THE COURT: Do --

4 MR. SCHWARTZER: -- million-and-a-half-dollar --

5 THE COURT: Do we --

6 MR. SCHWARTZER: -- net proceeds.

7 THE COURT: -- know if Phase Two that we -- do we
8 already have Phase Two as our collateral or is Phase Two is a
9 new loan to be funded for which we'll get collateral?

10 MR. GORDON: Your Honor, I stand corrected. If you
11 look at paragraph 33 --

12 THE COURT RECORDER: I'm sorry, Counsel. Could you
13 move the microphone closer --

14 MR. GORDON: Yes.

15 THE COURT RECORDER: -- to you.

16 MR. GORDON: If you look --

17 THE COURT RECORDER: Thank you.

18 MR. GORDON: -- at paragraph 33 --

19 THE COURT: Oh.

20 MR. GORDON: -- it says --

21 THE COURT: It does say it's less the remaining
22 value.

23 MR. GORDON: Right.

24 MR. SCHWARTZER: Yes.

25 MR. GORDON: That's why I was --

1 MR. SCHWARTZER: I mean, we're --

2 THE COURT: Okay.

3 MR. SCHWARTZER: We want to make sure that --

4 THE COURT: So it was disclosed.

5 MR. SCHWARTZER: And, yes, we -- yes.

6 THE COURT: Okay. All right. So let's do the easy
7 things first then so at least Ms. Scann is --

8 MS. SCANN: And we --

9 THE COURT: -- freed from her --

10 MS. SCANN: Thank you, your Honor.

11 And we do need a written order. We're dealing with a title
12 company, so --

13 THE COURT: Okay. You'll have to upload that order,
14 so --

15 MS. SCANN: Right.

16 THE COURT: -- on yours. All right.

17 So on the motion to forbear, I'll grant the motion for
18 release of excess collateral for Franklin Stratford.

19 Do counsel waive signature on that?

20 MR. SCHWARTZER: Your Honor, the only thing I want to
21 make sure is because the condition -- the idea of this
22 agreement is that the net proceeds from the sale of the real
23 property will go to the general contractor.

24 We want to make sure that the net proceeds go to the
25 general contractor or anything that's not paid to the general

1 contractor will be paid over to USA Commercial Mortgage.

2 MS. SCANN: The general contractor is Petra, Inc.,
3 and we've proposed --

4 THE COURT RECORDER: I'm sorry, Counsel.

5 MS. SCANN: -- to put right in the order --

6 THE COURT RECORDER: Could you move the microphone
7 closer to you.

8 MS. SCANN: We would propose --

9 THE COURT RECORDER: My apologies.

10 MS. SCANN: -- to put it right in the order that the
11 net proceeds go to Petra, Inc., and --

12 MR. SCHWARTZER: Okay. That will be fine.

13 THE COURT: So just have Mr. Schwartzer sign off on
14 the order and everybody else waives signature?

15 MR. SCHWARTZER: That will be --

16 MS. CARLYON: Ms. Karasik would like just to have a
17 couple hours to review the order.

18 THE COURT: Okay. So make sure you upload -- or give
19 it to them in the morning. Upload it to me. Friday morning's
20 fine.

21 MS. SCANN: Okay.

22 THE COURT: I mean, if you --

23 (Colloquy not on the record.)

24 THE COURT: The sooner the better, but you --

25 MS. SCANN: Yeah.

1 THE COURT: -- can still --

2 MS. SCANN: I'll do it.

3 THE COURT: -- upload it Friday.

4 MS. SCANN: I'll do it as soon as I can get it done.

5 THE COURT: Okay. All right. And the Boise/Gowen is
6 off.

7 MR. SCHWARTZER: Right.

8 THE COURT: And the Amesbury I'll grant. I make no
9 opinion as to whether or not an order is required.

10 MR. SCHWARTZER: Okay.

11 THE COURT: And then HFA, that's continued 'til --

12 MR. SCHWARTZER: July 25th.

13 THE COURT: -- July 25th or do you want --

14 MR. SCHWARTZER: That makes more --

15 THE COURT: -- August 4th?

16 MR. SCHWARTZER: -- sense on July 25th because I
17 think August 4th is going to be worse, your Honor.

18 THE COURT: Okay. It's impossible.

19 (Colloquy not on the record.)

20 THE COURT: All right. Now, so the only other
21 financing motion is our motion to borrow, correct?

22 MS. CARLYON: Oh, your Honor --

23 THE COURT: I'm sorry.

24 MS. CARLYON: Was Amesbury approved?

25 THE COURT: Yes.

1 MS. SCANN: One more point on the Franklin Stratford.
2 There was a -- the order requested that the ten-day stay be
3 waived, and I would request that be part of the order.

4 THE COURT: Oh. Does anybody have any objection to
5 waiving the stay on that?

6 There's nobody in opposition --

7 MS. SCANN: No?

8 THE COURT: -- so that's granted. Okay.

9 Now -- all right. Let's hear argument on -- I need my
10 calendar again -- the financing motion.

11 THE CLERK: What page is that, Judge?

12 THE COURT: This is the motion for interim permanent
13 orders authorizing postpetition financing.

14 (Colloquy not on the record.)

15 THE CLERK: Okay.

16 MS. CARLYON: Page 4 of the Court's calendar.

17 MS. JARVIS: Your Honor, we are at a critical stage
18 of this case. We have essentially finished the first piece or
19 the first phase of the forensic accounting and restoring
20 reliable books and records and are ready to begin reinstating
21 disbursements to investors from money now held in the
22 collection account and moneys collected in the future, and
23 that's to be heard on August 4th.

24 We will begin discussing the outlines of a plan of
25 reorganization with the four committees next week and plan to

1 get that plan on file in July prior to the next hearing.

2 However, despite what we believe is a process which we have
3 quickly moved this case forward, we no longer have time to wait
4 to arrange for DIP financing, and we need this for several
5 reasons.

6 First, we must make sure that we have sufficient operating
7 capital not only to perform services under the valuable
8 servicing agreements with lenders and to take actions to
9 preserve and protect collateral securing such loans, but to
10 protect the assets of the Fund's estates in pursuing collection
11 of other actions on behalf of this estate to preserve value for
12 the lenders in these funds as well.

13 Each month that goes by without the funding ability to
14 adequately deal with enforcement actions or to pursue money
15 that needs to be recovered back into these estates decreases
16 the likelihood of success for the estate in taking advantage of
17 the immediate opportunities to collect some amounts and to
18 aggressively pursue those that owe money to this estate or to
19 the lenders serviced by this estate.

20 Our focus is on collecting these loans to rehabilitate
21 loans and pay off investors and in bringing money into the
22 estate now from third parties to hopefully increase the pot
23 that needs to be divided among the unpaid investors and
24 creditors of this case who will not be paid by the mere
25 collection of the loans.

1 That would be enhanced with adequate financing, and that
2 would hopefully then minimize the disputes that we may have
3 over the ultimate distribution of the assets of these estates
4 since these estates can ill-afford protracted disputes among
5 claimants.

6 But in order to do this, this estate must be adequately
7 capitalized, and the DIP financing as proposed is the first
8 step and is a very important step in doing that immediately.

9 Without this adequate capital, it will be difficult for us
10 to proceed to protect the valuable servicing contracts of this
11 estate because we have certain functions we need to perform,
12 and we need additional capital to make sure that we can do
13 that.

14 Secondly, we must begin immediately to deal with these
15 funding issues on the construction projects that both serve as
16 collateral for direct lenders and for the Fund lenders.

17 We cannot wait any longer because many of these projects
18 are at a critical stage and must receive funding immediately to
19 preserve the value in the project and to prevent mechanic's
20 liens.

21 THE COURT: But you haven't even talked to the
22 lenders yet, and I don't understand timing wise --

23 MS. JARVIS: But we have --

24 THE COURT: He said he was going to talk to the
25 lenders first. The motion would have to be filed by July 7th.

1 This is June 21st. How is that even possible?

2 MS. JARVIS: But because as he testified, he can't
3 talk to the lenders first unless he has a proposal.

4 For instance, you need to look at the proposal. You need
5 to figure out what the interest rate is going to be, you know,
6 what the terms are going to be --

7 THE COURT: Well, why couldn't --

8 MS. JARVIS: -- to make sure --

9 THE COURT: -- he say --

10 MS. JARVIS: -- that makes sense.

11 THE COURT: Why couldn't he say, look, here's this
12 company that will give us a loan, and would you be willing to
13 do it if? Why does he have to pay the money first? Shouldn't
14 he first see if there are loans (indiscernible)?

15 MS. JARVIS: Well, it depends on -- part of the
16 reason why we got the appraisals, your Honor, was to make sure
17 we understood the value of the property not only in its current
18 state but also as it would be with increased funding.

19 Now, you know, looking at that as an important piece
20 because looking at the terms of that you've got to make sure --
21 before we make a proposal to the lenders in this, we want to
22 make sure that it works for them, that it doesn't make the
23 situation worse for them, it makes it better.

24 But in order to do that, we need to have, you know, the
25 terms tied down. We need to have something to propose where we

1 then can look at it in terms of the value that will be added by
2 adding on this piece versus the cost of that piece, and we
3 can't do that until we get a proposal, and we can't get a
4 proposal until we get this first piece of the financing
5 approved.

6 THE COURT: Okay.

7 MS. JARVIS: To wait even a month to start on this is
8 too late to present -- I think to prevent the losses that now
9 loom over these loans.

10 In addition, it will put us in a situation where we will
11 begin to see litigation arising out of the situation which
12 again will impose additional costs on this estate, real costs
13 in defending that, and even if we would prevail on that, we
14 still have to deal with the litigation costs in defending.

15 This will, therefore, avoid litigation costs and protect
16 the value of the collateral for the lenders.

17 Further, since the borrowers as we've previously stated and
18 as we've seen today with Mr. Russell are borrowers on multiple
19 loans, there's a domino effect. If one loan of a borrower fits
20 into this category, it can affect not only this loan but other
21 loans that also affect other investors.

22 As we've previously demonstrated to the Court, there is a
23 tremendous amount of overlap in this estate, and, therefore,
24 it's very difficult to prevent a ripple effect, you know, when
25 there is one loan because of the overlap in investors and the

1 overlap of borrowers. So when one loan is affected, it does
2 affect other loans as well. We can't wait even 60 days because
3 these issues are critical and need to be focused on
4 immediately.

5 Third, we need to know that we have multiple options for
6 reorganization going forward that having a DIP provides. These
7 debtors are slowly being starved to death by the lack of cash
8 as more and more of the difficult loans are left as the sole
9 group to service while unsecured creditors and numerous
10 innocent investors harmed by principal diversions that are of
11 no fault of their own look to the debtor for a solution to
12 their claims that cannot be adequately explored without
13 sufficient cash on which to operate and deal with the other
14 funding problems of this estate.

15 If maximum options to reorganize or even to liquidate in an
16 orderly manner are to remain available to these debtors, they
17 must have sufficient operating cash or these options will not
18 be available.

19 We must know that we have sufficient capital for our
20 servicing contracts including carrying any defaults under that
21 in order to maintain the value of those contracts as well, and
22 as we plan to file a plan again within the next few weeks,
23 knowing that we have this funding is critical.

24 Fourth, we need to know whether these estates are on the
25 brink of administrative insolvency with the weight of the

1 committees and the professionals being added to the debtor's
2 professionals.

3 Now, while that is not an issue until a week after
4 July 25th, it is coming up immediately, and it needs to be
5 dealt with because decisions need to be made now in order to
6 try to minimize that effect, and if we do not have financing
7 available, we have to consider that. The debtor has to
8 consider that as Mr. Allison testified in going forward.

9 That will force -- if we're in that situation, that will
10 force the debtor on a very different course of action, and we
11 just cannot ignore this pending reality if the financing --
12 because essentially we're asking to finance this on the backs
13 of the professionals who have to be paid at some time or the
14 other.

15 We need to make sure that we have an endgame in sight, that
16 we have adequate funding to be able to take the actions we need
17 to take, and to feel like we can move this business forward in
18 an appropriate way, and the interim financing is critical to
19 that.

20 Further, while the funding is critical both in the short
21 and the long term, the interim relief we seek at this hearing
22 is reasonable and is in the debtor's best business judgment.

23 We have spent tremendous amount of time dealing with the
24 committees' objections, and, frankly, at the beginning of the
25 hearing, I think your Honor heard that with all the amendments

1 that we made to the term sheet that but for the fees issue that
2 the committees were onboard with this financing understood that
3 it needed to go forward and had agreed to it.

4 And so while we've spent a lot of time talking about the
5 fees issue with respect to the testimony of Mr. Allison, I
6 think that point should not be lost that other than that issue
7 there is an agreement that the DIP financing needs to go
8 forward.

9 We have proven a lot of protection, so we're asking only
10 for a use of up to 3,000,000 pending the final hearing. We've
11 agreed that the Funds committees and the creditors committee
12 can dictate essentially whether they are in agreement that
13 advances need to be made. So we've put in protections to
14 protect the creditor groups from any advances that they may
15 think are not appropriate.

16 We have provided that -- so we've given them the discretion
17 to oversee, monitor, and control any actual advances used by
18 the debtor in the interim period as well as the ability to
19 dictate to the debtor whether those unfunded commitments --
20 which of those unfunded commitments we move forward to get
21 noticed up immediate for funding.

22 So we've put in a lot of protections to protect the
23 creditors of this estate. We've negotiated for no exit fee for
24 the repayment of this interim financing if permanent financing
25 is not approved.

1 We've eliminated the first right of refusal on the loans on
2 the construction needs so all options can be looked to for
3 those, but we don't want to lose the option we have here to be
4 able to get that financed through the DIP financing.

5 We've eliminated mandatory prepayments for the interim
6 financing, eliminated avoidance actions and intercompany
7 receivables for the interim financing as collateral.

8 We have not sought to use investor funds, and part of our
9 agreement in going forward on this DIP financing was our
10 agreement to set aside those investor funds which we have
11 collected on prepaid interest and also the interest on the
12 funds held in the collection account because we understand that
13 there are issues with respect to those funds and feel like it's
14 more appropriate to preserve those and to deal with that at a
15 later time in a global context where we're dealing with how do
16 we get these investors who -- or these lenders whose principal
17 has diverted paid in a plan of reorganization along with the
18 unsecured creditors.

19 We've agreed to weekly reports showing the budget to
20 actual, and, thus, with all of these protections that we have
21 negotiated we have reduced substantially the risk to the estate
22 so that the risk is really small comparatively for this interim
23 financing.

24 But the downside without it can be devastating to this
25 estate. It can be a turning point for this estate, and if this

1 case has any hope of a successful reorganization the debtors
2 have met the standard for this interim financing.

3 We are only going to pull down what is necessary for
4 irreparable -- to prevent irreparable harm, but that
5 irreparable harm is looming, and in the debtor's best business
6 judgment this is necessary to prevent this going forward.

7 We need to deal with this in a controlled fashion which
8 this DIP financing allows us to do while there still exists the
9 possibility of a healthy future.

10 Waiting any longer to grant this relief may irreparably
11 damage the debtor and its ability to reorganize and to pay all
12 of the creditors of this estate, and we, therefore, would ask
13 that the Court grant this interim financing with the various
14 amendments that we have negotiated and the protections that we
15 have put in place on an interim basis for 30 days pending a
16 final hearing on July 25th.

17 THE COURT: Okay. All right. Opposition.

18 (Colloquy not on the record.)

19 MR. LEVINSON: I want to clarify one problem first.

20 This is the first page of Exhibit -- it's either 1 or A.
21 My fund actually has cash. If you look at this line here, we
22 have 500-and-something thousand -- my eyes can't read it from
23 here -- and we will continue to have that.

24 And then the week of July 9th we will be tagged for
25 \$125,000 to fund the other debtor, and toward the end of August

1 we will be tagged again, so the total we will be paying is
2 \$250,000. We'll be paying 125 here, 125 here, 250. So we do
3 have cash, and we are funding this debtor in addition to the
4 collateralization that's being sought.

5 The Diversified Trust view is that there is no need for
6 cash within the next 30 days. The evidence I think is clear
7 because the debtor has the funds to pay it.

8 So what we're doing here is we're paying \$300,000 for an
9 insurance policy so people will know that cash will be
10 available if it has to be drawn down, but it doesn't have to be
11 drawn down because there's no need for it.

12 We do agree, my committee agrees, that we do not want the
13 debtor to shut down tomorrow, that we are interested in
14 negotiating a DIP financing agreement, and we would be willing
15 to do that so a full, complete agreement could be heard by the
16 Court on July 25th.

17 Look at where we are. First off, this motion was filed
18 without any notice to my committee at all. We started talking
19 after it was filed. We've been negotiating on and off ever
20 since.

21 We learned this morning that the term sheet that's attached
22 to the motion is out the window, that there's been so many
23 changes.

24 We received last night in time for us to be able to read it
25 for the first time this morning a new and revised version of

1 the order which we went through this morning in part during a
2 meeting that started at 7:30 that was set at 11:00 o'clock last
3 night and in part while you were hearing testimony about
4 kicking Fertitta of the committee as we were trying to learn
5 just what this order provided.

6 If the Court were to grant the motion today, we would have
7 to spend the rest of tonight and tomorrow negotiating the form
8 of order because what we have in front of us, what you have, is
9 nothing like what it will end up looking like.

10 What we would suggest is that the Court deny the motion
11 now, give us a chance to negotiate a real DIP, perhaps even
12 look at the DIP loan agreement.

13 I know that's an unusual concept to have before we come in
14 for a DIP motion, but to see the DIP agreement, to see all the
15 little bells and whistles that lenders put in, and that debtors
16 and committees fight, and that judges generally don't like to
17 give us a chance to look at that and vet it completely before
18 the next motion is filed so when we come here on July 25th
19 you'll actually have something to really consider instead of an
20 order that was marked up and E-mailed last night at 11:00
21 o'clock at night.

22 THE COURT: Okay. All right. Objections? Comments?

23 MS. KARASIK: Your Honor, Eve Karasik, Stutman,
24 Treister & Glatt on behalf of the First Trust Deed Fund.

25 THE COURT RECORDER: I'm sorry, Counsel. Could you

1 move the microphone closer to you.

2 MS. KARASIK: Yes.

3 THE COURT RECORDER: Thank you.

4 MS. KARASIK: We echo the comments by Diversified
5 Trust Fund, and we will not repeat those.

6 I just want to state on the record that it's really our
7 fund whose ox is going to get gored in this case. I mean, we
8 have the best loans. We have the best portfolio.

9 They're asking our fund to really carry these cases, and we
10 really did try to work with them on this. We gave them a lot
11 of proposed changes to the term sheet.

12 They were very responsive. We just couldn't get past the
13 fees on a \$3,000,000 loan to pay nearly over -- and we don't
14 even know, maybe 300,000, maybe more. They won't cap their
15 fees. We just can't do that.

16 THE COURT: And how many -- I've forgotten. There's
17 like 1600 investors?

18 MS. KARASIK: I believe that's right, your Honor.

19 THE COURT: And --

20 MS. KARASIK: I'm not sure.

21 THE COURT: Between the two funds.

22 MS. KARASIK: And maybe with some sort of different
23 pricing it could have worked, but we just didn't get there
24 today, and the need doesn't demonstrate it. There's just no
25 need here for this.

1 There is one issue I wanted to raise. In their term sheet
2 that they signed which who knows if it's really binding because
3 the Court didn't approve it, and it's not ordinary course,
4 there's a negotiation exclusivity provision in it so the debtor
5 is not permitted to talk to any other lenders because they
6 signed that term sheet. That's problematic.

7 We need to open the doors. We need to make sure that these
8 are the best terms that they can get especially because it's
9 our fund's assets.

10 So we would ask that the Court hold that that is not --
11 that the debtor is not bound by that provision or at a minimum
12 that we can go out and talk to folks and that if we find people
13 we want them to talk to that they must be directed to provide
14 information and communicate with those lenders.

15 THE COURT: Okay.

16 MS. KARASIK: Thank you.

17 MS. CHUBB: Your Honor, only with respect to the
18 collateral that might be pledged on behalf of my direct
19 lenders, I would just ask the Court to restrict that collateral
20 to the fees that might be received pursuant to the servicing
21 contracts.

22 The contracts have not been accepted or rejected. They
23 can't be treated as property of the estate yet, so the
24 contracts themselves should not be included as collateral.

25 (Colloquy not on the record.)

1 THE COURT: Okay.

2 MR. LEVINSON: Your Honor, while we're waiting,
3 Marc Levinson for the Diversified Trust.

4 We actually have 1900 investors in the Diversified Trust
5 Fund. I believe anecdotally there's like 1300 in the First
6 Trust Deed Fund.

7 (Colloquy not on the record.)

8 THE COURT: And I recognize there's a lot of overlap
9 between the direct lenders --

10 MR. LEVINSON: There is.

11 THE COURT: -- and whatever.

12 MR. LEVINSON: There is.

13 THE COURT: I understand that, but I just kind of
14 want to remind everybody that since it's not just like some
15 group that's owned by a bunch of insiders, these are all
16 investors just like the direct lenders were.

17 (Colloquy not on the record.)

18 MS. KARASIK: That's correct, your Honor.

19 MR. LEVINSON: That's correct.

20 MR. LANDIS: Judge, all we did was respond to the
21 debtor-in-possession financing motion, and I have these
22 observations.

23 Prepaid interest equals stolen borrower payments. Monetize
24 the loan means liquidation of existing loans, and Investment
25 Partners equals Hantges and Milanowski.

1 The United States Trustee is concerned that borrowed moneys
2 secured by fund assets to benefit Hantges and Milanowski in any
3 way who were running USA Commercial Mortgage when the borrower
4 payments were taken doesn't make a lot of sense.

5 That having been said, the committees are well represented.
6 They understand the issues. They are willing to discuss this
7 matter with the borrowers. We're willing to stand back and
8 simply review the form of order if an agreement can be reached.

9 THE COURT: Okay. Mr. Charles.

10 MR. CHARLES: Your Honor, the Unsecured Creditors
11 Committee had filed a response that was generally not
12 supportive. We are generally supportive of the changes that
13 have been proposed, although, also they've agreed to consult
14 with us.

15 Really, only three points. One is I hope they're right
16 that their assets are at risk, but I looked at the schedules
17 and saw it, and we looked at the schedules as a committee and
18 saw \$80,000,000 of assets at USA Commercial Mortgage. Maybe
19 the question's of timing and liquidity, but there are
20 significant assets here.

21 Our committee are unsecured creditors. They're not lenders
22 yet -- they may be soon -- and they looked at the numbers and
23 the amounts and thought -- and listened to Mr. Allison and
24 thought if you starve this thing, if you, you know, kind of
25 kill it up with little cuts you end up with -- and no one used

1 this example except me -- the RTC. I mean, what was it like
2 when the RTC was collecting loans?

3 When I was representing borrowers, we got away with a lot
4 because they weren't in a position to --

5 THE COURT: That's because you represented them.

6 MR. CHARLES: Also true, but they weren't -- when
7 lenders can't be aggressive, when the only option -- and to
8 answer one of your questions, when the only option is you have
9 to foreclose and take your lumps with however long that takes
10 or how much time it takes or how much cost that involves, that
11 doesn't work in terms of maximizing the dollars that you get
12 out of this mess.

13 And if you don't maximize the dollars you get out of this
14 mess, all of the lumps fall on the unsecured creditors because
15 people will say USA Commercial Mortgage brokers violated this
16 contract and that contract, here are bigger claims, and the
17 pool as it shrinks the claims rise. We are hurt.

18 And so we supported this even on an interim basis hoping
19 they don't need the money but believing that that will make it
20 more likely to succeed.

21 Last, on USA Investment Partners and Mr. Landis' point, we
22 still think -- I still think that's a good thing. The biggest
23 asset unfortunately in USA Commercial Mortgage if it's
24 approved -- and I sure hope it is -- is that \$56,000,000 note
25 from USA Investment Partners that is secured hopefully by

1 everything that's useful.

2 So if you prop up their projects, it's not like they have
3 gold or coins or land you can go take. They've got projects
4 and deals, and you need to make their deals work to turn that
5 into money. If their deals go to hell, their note isn't worth
6 much.

7 THE COURT: Okay. Let me just go ahead. We're all
8 sick of each other.

9 MS. JARVIS: Your Honor, if I could just make just
10 one point, one --

11 THE COURT: One. One minute. That's it.

12 MS. JARVIS: All I'm going to say is just this. You
13 know, the Funds argue it's their collaterals at risk and,
14 therefore -- and these fees are too much, and they don't want
15 to pay these fees.

16 But if you really look at where the fees are being paid
17 from, and if we're right and we happen to be -- and we don't
18 need to pull down anything on this loan in the interim period,
19 the fees are coming from the unsecured assets of this estate.

20 So it's the unsecured creditors that are actually paying
21 for this, and they'd support this because they understand that
22 this is important for maintaining the value of this estate. So
23 those fees are coming out of their assets.

24 Thank you, your Honor.

25 THE COURT: Okay. I think unfortunately in a sense I

1 think this motion is a motion based on paranoia of the fact
2 that Mom's going to be gone for a little bit, and the reality
3 is things will be fine, kids. Dad's still here.

4 I don't want another judge to have to deal with any of
5 these things, but if there was a true emergency there's a
6 visiting judge here for two weeks. Judge Markell is here for
7 two weeks -- Judge Markell's here. They're all only gone -- in
8 fact, Judge King is here the week that they're at the
9 Ninth Circuit conference.

10 But, more importantly, in the real world -- it's like I
11 said last week. You know, a 30-day notice is what you would
12 normally give in this kind of a context. This was just sort of
13 a reaction because I guess you were afraid somebody wasn't
14 going to hear it because -- and the reality is there is no need
15 for emergency money right now.

16 The good news is Mr. Allison is doing a terrific job
17 managing the money, collecting what he has. There is
18 sufficient funds to fund this the next 30 to 45 days.

19 Secondly, the 125 has gone away, and, more importantly, I
20 was very skeptical about that anyway. I'm really concerned
21 about the slippery slope of making these loans especially
22 without the direct-lenders' consent.

23 Thirdly, foreclosure. I think you're going to be able to
24 find attorneys to start the foreclosure process, and I'll get
25 to it in a moment. I don't think there's any doubt that at

1 some point lending will be approved either in the context of a
2 plan for purposes of going after foreclosures or any of these
3 kind of things.

4 But the problem now is there are too many unknowns. We
5 would never get an agreed upon order. I mean, collateral -- I
6 have a big issue about collateral.

7 As I've sort of intimated -- and I'm sure many direct
8 lenders don't want to hear this or are afraid to hear this -- I
9 seriously question whether or not you can when you make a loan
10 on a current loan to try and get value for that loan, why in
11 the world you could give a lien on all the other assets as
12 opposed to the loan, a senior loan, on that very project. It
13 is those people who are benefitting.

14 Perhaps even more importantly is -- and the reason this is
15 premature is I think that it's imperative that you get -- at
16 least advise the direct lenders on any of these loans before
17 you attempt to loan more money to get you out of the hole on
18 the current loan.

19 Having said all that, just so that Mr. Allison doesn't feel
20 like the rug has been taken from under him, I think it's safe
21 to say that DIP loan financing would be approved for loans that
22 direct lenders have all agreed that that's what should be done
23 and/or we have a hearing and you convince me that under the
24 bankruptcy code notwithstanding 100-percent consent that's the
25 right thing to do.

1 I guess what I'm saying is this is not to suggest that some
2 loan couldn't be approved once we get all these issues -- in
3 fact, the lenders committee -- the Fund committees have
4 intimated as much.

5 So it's not that we're saying there can't be a loan. It's
6 just it's premature in my mind. It doesn't meet the
7 requirements of the 15 days, first of all, nor can I say, okay,
8 fine, go let somebody else hear it, it's got to be done in the
9 next 30 days. I just don't see the need, and there's too many
10 concerns.

11 I think -- and Ms. Chubb had this question last week in
12 relation to what do you do first. Do you first find out if you
13 can lift stay, I'm going to lift stay, or do you go to your
14 clients -- do you go and get your 51 percent? I understand
15 it's a chicken and egg.

16 The same thing is true here. I think the first thing to do
17 is to have those conversations with the lenders on these new
18 monetizings, if you wish, to see if that's what they want to
19 do.

20 And I think, Ms. Jarvis, you'd probably concede you're not
21 in a position to actually say at this time that that's the
22 right thing to do because, for example, if this one loan -- the
23 property is worth as much now as the debt, then why do you want
24 to put more money into that loan with the attendant risk that
25 you won't get that money back.

1 I mean, I recognize there's a lot of mortgage companies,
2 and I'm sure USA Capital did. I know Lemon (phonetic)
3 certainly did. That the answer to paying off a loan was you
4 just get a new loan and pay off that loan.

5 Now, the fact that the property may not appreciate in
6 enough value to take care of that was kind of beside the point.
7 So that's what we've got to be careful of.

8 So I'm going to deny the motion, but will keep the motion
9 on for the July 25th hearing. It's just on an interim basis
10 I'll deny it.

11 I do think you've made out a case for financing in general.
12 The question is what kind of collateral, the question is the
13 fees, and the question is for what kind of things that you draw
14 down on, and you've already conceded you will not draw down to
15 fund new loans without consent. So, again, that all works
16 together.

17 I do think it appropriate that the term sheet not be
18 approved insofar as I think you should be able to negotiate
19 with other lenders. That's not to say -- I don't think anybody
20 necessarily disagreed with the terms of the loan, and I think
21 -- I gather the fees -- it was just a question of what fees
22 were paid upfront.

23 Was that the issue as opposed to --

24 MS. KARASIK: Your Honor, after this morning's
25 conversation when we understood that they had agreed to take

1 out the laundry list of objectionable provisions, that
2 satisfied that issue on an interim basis.

3 Those are going to come back to haunt us and will still
4 come back to haunt us on the final basis, and we're going to
5 need to work through --

6 THE COURT: Okay. Okay.

7 MS. KARASIK: -- many of those issues --

8 THE COURT: Okay.

9 MS. KARASIK: -- but the fees were what we couldn't
10 get past today.

11 THE COURT: Okay. So, again, those are the reasons
12 why I'll deny it on an interim basis.

13 Now, let me indicate that if you modify the motion, you've
14 got to file your modification -- let's get some dates here, and
15 we're going to go into housekeeping for one moment before we
16 get to the other matters.

17 You're going to have to file a modification by July 14th.
18 Any new budgets will have to be given by July 19th.

19 I don't see, quite frankly, how you can put on motions -- I
20 have no objection if you put on motions to fund at the same
21 time in anticipation of getting a loan or outlining in the
22 motion what you intend to fund, but keep in mind the Catch-22
23 that you admit it. I don't see how you get time to at least
24 discuss intelligently the transaction with the direct lenders
25 before that.

1 Now, I understand. Some of these loans have 900 people.
2 You can't, quote, discuss it with them, but I think they
3 deserve a letter which explains what you want to do and work
4 out the procedure from there.

5 And I will -- I'm not deciding at this stage what happens
6 if -- let's assume we've got a smaller group. Let's assume it
7 was Ms. Davis' loan that we were talking about where we had to
8 define 15 people.

9 I'm not deciding at this time. I don't know what the
10 answer is. I don't know if, for example, that you have pushed
11 the 125 issue and they had said no, what the answer to that
12 question is.

13 It may well be if they said no, that's it because it's
14 their money they're risking and not anybody else's. It may
15 well be that what if you had -- the majority said no, and the
16 minority said yes, so how do we balance that. I don't know the
17 answer to that.

18 But I do think that the direct lenders have to be at least
19 advised of the fact and giving all the information especially
20 since you are, in essence, making new loans which I think
21 Ms. Davis' might be -- you know, there's a concern about, okay,
22 you're saying it's not really your money, it's coming from a
23 lender. Well, I'm not sure what the distinction is there. All
24 right. So on that issue.

25 Now, what do you want to do about Investment Partners? Do

1 you want to come back tomorrow on Investment Partners or --
2 (Colloquy not on the record.)

3 MS. JARVIS: Your Honor, let me just clarify one
4 thing.

5 You know, our term sheet with CapSource which we
6 substantially, you know, renegotiated, and they were very good
7 about that, does have a drop-dead date basically of at least
8 closing on an interim financing by June 30.

9 So all I'm saying is I don't know -- I think we should not
10 automatically continue this because I don't know that that is
11 going to be available.

12 So I think --

13 THE COURT: Well, we can --

14 MS. JARVIS: -- either --

15 THE COURT: It's easy --

16 MS. JARVIS: -- either by the --

17 THE COURT: -- to take things --

18 MS. JARVIS: -- either by --

19 THE COURT: -- off calendar.

20 MS. JARVIS: -- the 14th if they, you know, decide
21 they are still interested, we could do a renewed motion, you
22 know, or --

23 THE COURT: I think it's easier to keep it on
24 calendar because then you're not asking for an order shortening
25 time.

1 MS. JARVIS: Okay.

2 THE COURT: And if there's no funding there --

3 MS. JARVIS: Then we'll just pull it off calendar.

4 THE COURT: -- the motion's off calendar.

5 MS. JARVIS: Okay. That's fine.

6 THE COURT: The motion's off calendar.

7 And I appreciate that, and I appreciate the good faith in
8 CapitalSource negotiating, but it's just -- it was just too
9 soon, and we certainly don't have consensus nor am I in a
10 position to rule what the collateral will be.

11 Quite frankly, if you pushed me to rule today I would say
12 that while I might approve a loan, I wouldn't approve the
13 collateral on the basis you've suggested because it seems to me
14 the collateral has to come from the loans that are advanced.

15 MS. JARVIS: And I think, by the way, there was some
16 misunderstanding on that.

17 With respect to the loans that were advanced on the
18 particular projects, (indiscernible) project, there never was
19 any proposal that it be secured other than simply by that
20 project itself. So that was never being proposed except with
21 respect to Boise/Gowen which has been taken off the table.

22 With respect to all --

23 THE COURT: Okay.

24 MS. JARVIS: -- other loans, solely secured by the
25 property that is being lent on, so --

1 THE COURT: Okay.

2 MS. JARVIS: I think, your Honor, with respect to the
3 Investment Partners, I don't know -- we have presented a
4 declaration of Mr. Allison and a reply brief that kind of goes
5 through the various factors for approving the settlements.

6 We've clarified that this settlement is not a settlement of
7 any amount. It's only a settlement of terms. So rather than
8 going and suing them on this, we have, you know, a note with an
9 interest rate and with terms.

10 And I would think if there aren't any -- I mean, if people
11 want to ask Mr. Allison questions, you know, we obviously could
12 put him on the stand.

13 However, I think to kind of shortcut this, we ought to just
14 ask whether anyone feels that testimony is necessary --

15 THE COURT: Right.

16 MS. JARVIS: -- or whether we can simply go forward.

17 THE COURT: Okay.

18 MR. LEVINSON: The two trust funds if the Court
19 doesn't mind would prefer to go forward. We don't need
20 Mr. Allison on the stand.

21 UNIDENTIFIED SPEAKER: (Indiscernible).

22 THE COURT: All right.

23 MS. CARLYON: And we have -- I'm sorry. We have that
24 motion, and we have the --

25 THE COURT RECORDER: Counsel, could you move the

1 microphone closer to you, please. Thank you.

2 MS. CARLYON: We have that motion left and the
3 information protocol motion left on the second one. I don't
4 know if that's something we want to just --

5 THE COURT: Can we do --

6 MS. CARLYON: -- set before a --

7 THE COURT: -- the protocol motion --

8 MS. CARLYON: -- visiting judge.

9 THE COURT: -- tomorrow? We could do it by phone
10 even for those counsel that need to leave.

11 (Colloquy not on the record.)

12 MS. CARLYON: That would be fantastic.

13 (Colloquy not on the record.)

14 MR. GOCHNOUR: And again --

15 THE COURT: And that just involves counsel, really.
16 It doesn't involve other people? Okay.

17 UNIDENTIFIED SPEAKER: Yeah.

18 MR. GOCHNOUR: On behalf --

19 MS. CARLYON: Thank you.

20 MR. GOCHNOUR: -- of the Investment Partners motion,
21 your Honor, for Liberty Bank, I have absolutely no problem not
22 taking testimony and just moving forward without it.

23 THE COURT: Okay. Thank you. All right.

24 So on the Investment Partner motion, why don't you go ahead
25 with -- let's go ahead and I guess opposition first.

1 MS. DAVIS: Excuse me, your Honor. For those of us
2 who are not participating --

3 THE COURT RECORDER: I'm sorry --

4 THE COURT: Yes.

5 MS. DAVIS: -- may we be excused?

6 THE COURT RECORDER: -- Counsel. (Indiscernible) --

7 THE COURT: You may escape.

8 THE COURT RECORDER: -- (indiscernible).

9 (Colloquy not on the record.)

10 MS. CARLYON: Ms. Davis asked for permission to be
11 excused.

12 (Colloquy not on the record.)

13 MS. DAVIS: I can't get to a microphone.

14 THE COURT RECORDER: Sorry.

15 (Colloquy not on the record.)

16 MR. LEVINSON: Your Honor, Mr. Hermann from my firm
17 is going to cover this one.

18 THE COURT: All right. Thank you.

19 (Colloquy not on the record.)

20 MR. HERMANN: Good evening, your Honor.

21 Jeff Hermann, Orrick, Herrington & Sutcliffe.

22 Ms. Jarvis has been up here all day --

23 THE COURT RECORDER: Can you move the microphone
24 directly in front of you. Thank you.

25 MR. HERMANN: -- so I volunteered to take a little

1 bit of weight off of her shoulders.

2 I want to address this motion in terms of two sets of
3 issues. One set of issues is whether or not the debtor should
4 do the deal.

5 THE COURT: I need to back up. Who do you represent?

6 MR. HERMANN: Diversified Trust Fund Committee.

7 THE COURT: Oh, okay. So you represent the Funds.

8 Okay.

9 MR. HERMANN: That's right, your Honor.

10 And there have been some objections on the first set of
11 issues about whether the debtor should do the deal. Our
12 objection really is assuming the debtor does the deal, which of
13 the various estates should benefit?

14 I'm sorry. I'm a little bit out of breath here.

15 Your Honor, the debtor filed the motion on shortened time.
16 The debtor didn't really provide much of a basis for an
17 understanding of whether it's a good deal or not.

18 And I would short-circuit all of that in the interest of
19 time by saying they got a 58.3-million-dollar promissory note.
20 Maybe it should have been 60,000,000.

21 (Colloquy not on the record.)

22 MR. HERMANN: But if that's the only issue we have,
23 that's a high-level problem because, frankly, we don't have any
24 evidence for this, but I think if these debtors could collect
25 \$58,000,000 for Investment Partners that would be a great

1 victory.

2 So it would be a high-level problem if we thought that
3 maybe there should have been a \$60,000,000 settlement, or a
4 \$61,000,000 settlement, or a \$62,000,000 settlement. So I
5 think we've got to deal with real -- excuse me -- real issues.

6 The second is that there's some forbearance built in here.
7 The debtors have agreed on this 58.3-million-dollar note, that
8 they will not proceed to collect the note for one year, and, in
9 fact, if the Investment Partners can pay \$20,000,000 in the
10 next year, the debtors would give them, in fact, an additional
11 year, so they get two years of forbearance.

12 And some people have objected saying, you know, that's not
13 a good deal for these debtors. We shouldn't be doing that.

14 THE COURT: Now, there's only one of those loans
15 that's yours, your client's, the 10-90, right?

16 (Colloquy not on the record.)

17 MR. HERMANN: Well, there's a lot of uncertainty in
18 all aspects of this, your Honor. We think that putting the 58
19 -- well, I'm now getting into the issues of between the estates
20 who should benefit from the deal.

21 It's been structured such that -- excuse me -- the
22 promissory note is made payable solely to USA Commercial
23 Mortgage for the 58.3-million-dollar promissory note.

24 And we, of course, reacted to that saying you're just going
25 off the books and records of the debtor. You don't know if

1 Commercial Mortgage advanced that money or Diversified Fund or
2 First Trust Deed advanced the money.

3 That should be an open book, and that shouldn't be decided,
4 but that's really not the issues as between the debtor's
5 estates and Investment Partners, the first set of issues.
6 That's really the second set of issues of if we do the deal,
7 who should benefit.

8 And so we do have a lot of issues over here, but on the
9 first set of issues, there have been a lot of stones thrown at
10 the debtor saying this may not be the best deal; they should go
11 back and try to cut a better deal; you know, we shouldn't give
12 them a year's forbearance; we don't know anything about how
13 they came up with the \$58,000,000.

14 And our take on all of that is it seems like a good deal in
15 terms of what would happen if this estate is able to collect
16 58.3 million dollars from Investment Partners.

17 Again, you know, maybe we'd all be kicking ourselves
18 saying, you know, it should have been a \$61,000,000 note
19 instead of a \$58,000,000 note. I think the probability of that
20 occurring is infinitesimal.

21 So in terms of whether it's the right amount on the note, I
22 think it's a high-level problem that we should skip over today
23 and get the deal approved.

24 If it's an issue about whether we give them forbearance,
25 the answer really is, you know, as a practical matter,

1 Investment Partners is really not getting any forbearance out
2 of this.

3 And I hope they're not here to hear this, but on the
4 58.3-million-dollar note, yes, they're getting forbearance.
5 The documents say we won't pursue you, but my client, the
6 Diversified Trust Fund, has, you know, the 10-90 loan which is
7 where the borrower is Investment Partners. It's \$55,000,000.

8 One of the things we wanted to clarify is that no one's
9 agreed to any forbearance on the \$55,000,000 loan, so those --

10 THE COURT: On the separate note, the 10-90 note.

11 MR. HERMANN: That's exactly right, your Honor.

12 THE COURT: Okay.

13 MR. HERMANN: So to the extent that people complain
14 that, gee, we have to wait a year before going after
15 Investments Partners, well, no, we don't really have to do
16 that. We can proceed directly on the 10-90 note.

17 So I don't really find there to be any legitimate criticism
18 of the debtors. Even though they teed it up quickly and didn't
19 support it the way they should have, there shouldn't be any
20 legitimate criticism of whether or not the deal should be done.

21 There's one other objection I think that was filed by the
22 Executory Contract Committee, the direct lenders, and that
23 objection basically says, you know, if you give this to the
24 debtors we have claims against Investment Partners we think.
25 We know we have claims against Milanowski and Hantges, and if

1 you do the deal, Judge, you're giving the debtors a leg up.

2 And I don't think there's any principle of law that would
3 say that you disable a debtor from doing a good deal because it
4 may put them in a better position than some other competing
5 creditor. That's what Mr. Allison is getting paid to do. He's
6 trying to better the position of these debtors.

7 So on that set of issues there are objections, but I think
8 that the easy decision is let's let them go ahead and do the
9 deal.

10 The second set of issues really relates to, as I said
11 before, it seems to be done for the benefit of one estate to
12 the exclusion of the other estates, and we have a problem with
13 that, and I think we have an agreement -- and I think everyone
14 raised that objection, the U.S. Trustee, our fund, the First
15 Trust Deed Fund.

16 And I think we have what is, in essence, an agreement in
17 principle with the debtor that they will agree that even though
18 the note's made payable to Commercial Mortgage, it's really for
19 the benefit of all the debtors.

20 Not necessarily on a pro rata basis, but time will tell
21 where these moneys came from that were transferred down to
22 Investment Partners, the moneys that have been, you know,
23 reduced to a note for 58.3 million dollars, and we think that's
24 okay, but we just don't want to have to fight with somebody
25 later saying, well, Judge Riegler approved this on June 21st,

1 and Commercial Mortgage is the only debtor that gets to benefit
2 from this deal.

3 If that's going to be the result, then we have very serious
4 information gaps that would allow us to even look at this
5 motion to decide whether or not it's a good deal or not.

6 But that shouldn't be an issue because the debtor has
7 agreed that they aren't taking a position as between the
8 different estates who should benefit. That will be sorted out
9 later.

10 THE COURT: So is the note going to make payable --
11 this microphone's working all of sudden. Is the --

12 MR. HERMANN: It's made payable to only one debtor.

13 THE COURT: Why shouldn't it be made payable to all
14 five debtors?

15 MR. HERMANN: Well, we suspect, for instance, that a
16 lot of the money that showed up on Commercial Mortgage's books
17 that went down to Investment Partners came from our fund. So
18 why shouldn't --

19 THE COURT: Well, yeah, maybe paid to your fund, but
20 why not make it payable to all five notes so that it saves that
21 issue later? I mean, at least so we preserve the fact that --

22 MR. HERMANN: Right. If we had it to do over again,
23 your Honor, the promissory note would have been payable from IP
24 as maker to all five estates as lenders.

25 THE COURT: Well, why can't you do that?

1 MR. HERMANN: I think that Mr. Allison's concern is
2 that if he has to go back to Mr. Milanowski and redo the deal
3 that he will slip away, and so Mr. Allison is looking for a way
4 to keep the documentation we already have, yet meet the
5 concerns of the different estates saying, well, you know, it
6 should be for our benefit also.

7 And so we were looking for an order that says this really
8 is going to be for the benefit of whichever estate really put
9 the money into Investment Partners, and we personally think,
10 the Diversified Trust Fund, we think that the lion's share of
11 the money came from us, but we may be wrong. We don't know.

12 Now, because Diversified Trust Fund has this outstanding
13 loan to 10-90, we know that \$55,000,000 of our money went to
14 10-90, and 10-90 loaned all of that money the best we can tell,
15 every penny, to Investment Partners.

16 In fact, in January of 2005, for whatever reason, everyone
17 got together and said, you know, 10-90's in the middle here.
18 We don't really need that. Let's collapse the deal, take 10-90
19 out, and from now on, Diversified Trust Fund, you're going to
20 be the direct lender, and, Investment Partners, you are the
21 borrower. Mr. Milanowski and Mr. Hantges were also personal
22 guarantors, and they agreed to that.

23 So the current structure is that there's a \$55,000,000 loan
24 owing from Investment Partners directly to Diversified Trust
25 Fund.

1 So another set of issues that we raise being early in the
2 process and not really having perfect information is, well,
3 maybe the same collateral that's being given for all the
4 debtors in this security agreement, maybe that was Diversified
5 Trust Fund's collateral. It should have been ours to begin
6 with, and not only should we share in that collateral, but we
7 should have a first shot at that collateral.

8 And we've asked that that issue be deferred also in the
9 interest of getting the deal done and not letting
10 Mr. Milanowski slip off the hook on the promissory note and the
11 security agreement.

12 So as between the second set of issues is which of the
13 debtor estates benefit, I think it's fair to say that everyone
14 agrees that all of those issues should be put on hold for later
15 determination and that whatever the Court does today is without
16 prejudice to any of those issues either as to the entitlement
17 to the promissory note, the principal under the promissory
18 note, how do you carve that up, and, secondly, on the security
19 agreement and the liens that are being created, who's first,
20 who's second as between -- well, I missed a step.

21 And that is the security agreement supports three
22 obligations; the 58.3-million-dollar promissory note, the
23 \$55,000,000 loan, the 10-90 loan, and three it's a catchall.
24 All other obligations that we may later find that IP owes to
25 any of the -- Investment Partners owes to any of these debtors.

1 So there's a second set of issues as between the estates
2 about who's entitled to the liens and what priority, and,
3 again, I think we've all agreed that will be determined at some
4 point in the future, and the debtor is so agreeable.

5 THE COURT: Well, isn't there a question if you enter
6 into this security agreement and you define obligations as
7 meaning everything else that's owed that you couldn't then sue
8 them for breaches of contract, breaches of fiduciary duty,
9 other loans that you don't yet know about?

10 MR. HERMANN: That's correct.

11 THE COURT: So why doesn't this agreement mean that
12 there would be a forbearance against them on anything for a
13 year?

14 MR. HERMANN: Well, there would be a forbearance --
15 well, I'm sorry. I'm sorry, your Honor. I'm absolutely wrong
16 about that.

17 There's a forbearance only with respect to the
18 58.3-million-dollar promissory note. As to the other two
19 categories of obligations secured, the 10-90 loan and the
20 catchall, there is absolutely no forbearance whatsoever.

21 So if there is a cause of action discovered by Mr. Allison
22 tomorrow that was not encompassed in the accounts -- the book
23 entries which form the compromise for the 58.3-million-dollar
24 promissory note, if this Court approves the deal today, he
25 could sue on the other obligation tomorrow just the same --

1 just like he could sue on the 10-90 loan tomorrow.

2 So there is no forbearance in the security agreement. The
3 only forbearance in the deal is in the promissory note.

4 THE COURT: And is there an acknowledgement in here
5 that by doing this does not release him from other claims or
6 constitute a merger, a waiver?

7 MR. HERMANN: Well, there is language in the
8 promissory note that says you understand, Investment Partners,
9 that when we're liquidating this amount into 58.3 million
10 dollars, it's not part of the 10-90 loan. You owe that
11 separately.

12 Now, I don't know if that language goes on further to say
13 and it's only a compromise of the receivables reflected on the
14 books and records of Commercial Mortgage.

15 THE COURT: I mean, there's the standard no-waiver
16 language in the note, but, you know, that could be read to mean
17 waiver with collection of that particular note.

18 I guess it's because we're dealing with a compromise. As
19 we know, the Ninth Circuit and the Supreme Court have ruled
20 that when you have a compromise that the initial transactions
21 go away, and then what you have to sue on is the compromise
22 notwithstanding the fraud in the initial transaction.

23 MR. HERMANN: And I think that --

24 THE COURT: So do we have anything that -- unless you
25 specifically reserve your rights to sue on the initial

1 transaction.

2 MR. HERMANN: Well, I --

3 THE COURT: And I'm --

4 MR. HERMANN: I think they may --

5 THE COURT: -- remembering this from the top of my
6 head --

7 MR. HERMANN: Right. Right.

8 THE COURT: -- and it's the Platters (phonetic) case,
9 so I might be wrong, but I think that's the case.

10 (Colloquy not on the record.)

11 MR. HERMANN: I think the debtor has made it clear
12 that all that's being compromised are the amounts that are
13 reflected in the promissory notes that previously were accounts
14 payable on the books of Commercial Mortgage.

15 So there is no general release in favor of Investment
16 Partners, in favor of the note. Certainly, there was the
17 intent that anything that shows up on the books as an account
18 payable has been liquidated into a 58.3-million-dollar note.

19 Therefore, if the debtors were to attempt to sue on any
20 kind of entry on the books and records as an account payable,
21 then Investment Partners would legitimately be able to say you
22 can't sue me on that, it's in the 58.3- --

23 THE COURT: Okay. So if we --

24 MR. HERMANN: -- million-dollar note.

25 THE COURT: -- find out tomorrow there was an

1 additional \$60,000,000 that was lent, the estate is stuck.

2 MR. HERMANN: I'll have to defer to the debtor on
3 that because I don't know what was reflected on the books and
4 what is not reflected on the books.

5 I think we're talking about anything that is reflected on
6 the books has been compromised at 58.3, but if we discover for
7 whatever reason that money went out the back door and never
8 made it to the books, that's fair game, and Investment Partners
9 can come in and say you can't sue me on that, it's in the
10 58.3-million-dollar promissory note, and the proper response
11 would be, no, because it's not an account payable on the books
12 and records of the debtors. It's an entirely separate
13 obligation.

14 THE COURT: Okay.

15 MR. HERMANN: And, again, your Honor, the 10-90 loan
16 can be --

17 THE COURT: We should --

18 MR. HERMANN: -- pursued --

19 THE COURT: -- probably have Mr. Charles look at this
20 since he's the wily person that represented all those ROC
21 entities.

22 (Colloquy not on the record.)

23 MR. HERMANN: Anyway, so our position, your Honor, is
24 that we think that the agreement should be approved. We think
25 that all the issues relating to how both the promissory note as

1 well as the liens are carved up among the different debtors
2 should be deferred. We think that the objection saying don't
3 give the estate a leg up should be overruled.

4 Thank you, your Honor.

5 THE COURT: Okay. All right. Other opposition,
6 comments in favor?

7 MS. JARVIS: Do you want me just to -- I think there
8 are some questions I can --

9 THE COURT: Sure.

10 MS. JARVIS: -- clarify.

11 THE COURT: That's fine. I would appreciate that.

12 MS. JARVIS: Your Honor, there is no compromise being
13 sought of the amount that is owed by Investment Partners. The
14 only compromise is on the terms of an amount that was derived
15 from the accounting records of Commercial Mortgage.

16 And Mr. Hermann is correct in the sense that the debtors
17 have no objections to and, in fact, intended to trace through
18 forensic accounting as to where funds originally came from, and
19 so this is not intended to impair the rights of any of the
20 debtors as far as where it may be determined that this money
21 ultimately should reside.

22 THE COURT: So maybe compromise is the wrong word to
23 use in this context?

24 MS. JARVIS: Yeah. It's --

25 THE COURT: This is not a compromise.

1 MS. JARVIS: Well, it's just a compromise of terms.
2 It's not a compromise of amount, and that is, you know, clear
3 in the note. It's clear in the --

4 THE COURT: Well, do we have an agreement? Do we
5 have a compromise agreement that says those things? We have a
6 note and security agreement, but where do we have anything that
7 tells us that, indeed, that's the deal?

8 MS. JARVIS: If you'd give me a couple of minutes,
9 I'll find the exact language, but it was negotiated in order to
10 allow for anything else we find that is owing by Investment
11 Partners we can and will pursue.

12 The reference in the note to 10-90 was merely because
13 that's a separate transaction, \$55,000,000, similar amount,
14 that it actually -- when Mr. Allison took over and we began
15 doing a review of the loan files, that was a loan that we found
16 that had no UCC filing that had been done on it, so we
17 immediately filed a UCC filing.

18 So that actually was filed before this agreement was
19 entered into, and there's only one overlapping property between
20 the two which is the Royal Hotel. The rest of the collateral
21 on the two is separate.

22 But let me find this for you because it is clear that there
23 is no compromise in the amount. It's only just the
24 forbearance, the terms, so -- and that was intended to --

25 THE COURT: But forbearance --

1 MS. JARVIS: -- benefit the estate.

2 THE COURT: -- on this particular amount or as to
3 everything?

4 MS. JARVIS: Only on this particular amount. Only on
5 this particular transaction which was derived from the
6 accounting records of Commercial Mortgage showing money going
7 out to Investment Partners that had never been documented in
8 any way.

9 THE COURT: Okay.

10 (Colloquy not on the record.)

11 MR. SCHWARTZER: Your Honor, if you look at the
12 security agreement which is Exhibit B, paragraph 1.1, it has a
13 provision that says the security agreement is securing the
14 note, which is No. 1-A; then, B, any obligations owed
15 separately under the 10-90 loan; and then, C, any and all other
16 obligations owed -- obligations, liabilities, and claims now or
17 hereafter owed or payable by the debtor to the secured party in
18 addition to the note.

19 So we're leaving outstanding is if there's anything we find
20 it can be secured and covered by the security agreement. So I
21 think that makes it clear that we're not saying the note is the
22 only obligation.

23 In addition to what Mr. Hermann said about the 10-90 note,
24 you should be aware that the 10-90 note is secured by its own
25 security agreement that was filed and recorded in January of

1 2005. That's a prior agreement. That note is still in effect,
2 and that 10-90 note doesn't disappear.

3 So what we're doing here by this security agreement is
4 we're giving the people who have the 10-90 note and the
5 security agreement additional security.

6 Now, there's about six things that secure the 10-90 note.
7 Now they're also going to have a security interest in all the
8 things that secured this note as well.

9 So that sort of solves the problem I think with the
10 committee. We're not saying that their prior note is not good.
11 We're saying the 10-90 note and security agreement is still
12 valid, and now they're getting additional security because
13 they're covered by this security agreement.

14 THE COURT: Okay.

15 MS. JARVIS: Your Honor, actually, I think the 10-90
16 loan was -- the financing statement was filed after Mr. Allison
17 was appointed as part of his review and cleanup of
18 documentation, but it was filed prior to this.

19 Mr. Schwartzer is right that the reason why the security
20 agreement extends to all debtors but the note is only to
21 Commercial Mortgage is simply for the purpose in case something
22 else is discovered, then, you know, it's basically dragging
23 into the security agreement the ability to get those amounts
24 also secured as well, but it does not, you know, affect any
25 compromise of any claims that may be owed by Investment

1 Partners.

2 THE COURT: Okay.

3 MR. WALKER: Your Honor, Russell Walker of
4 Woodbury & Kesler in Salt Lake City representing
5 Mr. Milanowski, Mr. Hantges, and USA Investment Partners.

6 I came here today with some degree of trepidation. I'm
7 glad this hearing has gone on long enough to lose some of our
8 spectators, but I do want to make a statement on behalf of
9 Mr. Milanowski.

10 I believe he is here in this case and has hired us to
11 represent him because he wants to do all that he can to help
12 this company reorganize and help the investors and the
13 creditors receive payment in full.

14 This \$58,000,000, in essence, the bulk of it represents
15 earnings on the investment that USA Commercial Mortgage
16 obtained through Investment Partner's investments.

17 The money didn't come from investors. It didn't come from
18 any other source, and I believe, you know, the course of
19 Mr. Allison's investigation will bear that out.

20 The 58,000 (sic) I think is a figure that we've looked at
21 and decided is a reasonable figure to represent that debt owing
22 back from Investment Partners to the company.

23 I think Mr. Milanowski is working hard to turn these
24 investments into money that can be paid into the estate. We're
25 not certain exactly how that will be divided up. I think that

1 will be up to the Court and the parties to decide how the best
2 way is to use that. Our hope is that it will go to investors
3 to pay claims and to pay unsecured-creditors' claims.

4 I think we are very concerned about today the number of
5 committees and the number of attorneys, and I can't imagine the
6 staggering cost of today's hearing and how quickly that eats up
7 money for unsecured creditors or investors.

8 It makes sense for the parties to try and get together and
9 use that to work together to solve the problem. That's what we
10 believe Mr. Milanowski's entire purpose is in being here.

11 So with respect to -- there was some discussion -- I
12 appreciate the Court giving us a good argument in case we do
13 get sued. I think Mr. Milanowski is sitting out there with a
14 lot of people angry and wanting to bring actions.

15 Our hope is that this is a first step and is good evidence
16 in his -- or evidence of his good faith and his willingness to
17 try and make this thing work and putting \$58,000,000 on the
18 table and trying to turn that into cash.

19 And we anticipate within a fairly short period of time
20 coming before the Court with a motion to approve payment of
21 that money into the estate and possibly some motion as to
22 designate how that money should be paid.

23 So in short, I think there is a forbearance. We're hoping
24 that good faith of the parties will come into play here and
25 that we're working together to solve the problem.

1 Today I've seen in the course of the hearing some
2 substantial disagreement between particularly the committees
3 and Mr. Allison. Our hope would be that we could work together
4 and stop the fighting and get it resolved, and I think that's
5 Mr. Milanowski's point, and we're all in favor of having the
6 Court approve this proposed stipulation.

7 THE COURT: All right. So that that's clear and
8 since you're here representing him, I assume then that you
9 acknowledge that this agreement would not release any claims
10 any of the debtors would have against him.

11 MR. WALKER: We had substantial negotiations
12 regarding release language, and the parties did not agree upon
13 any.

14 To the credit of Mr. Allison, my client made a business
15 judgment that he signed this document as written. There was
16 substantial discussion. I think his hope is that by stepping
17 up and paying the \$58,000,000, turning it into cash, getting it
18 paid to the estate will show people that that's the best way
19 for them to get paid.

20 THE COURT: So you agree, though, there is no
21 release --

22 MR. WALKER: I don't -- yeah.

23 THE COURT: -- nor merger, nor waiver.

24 MR. WALKER: But there also is no release in there,
25 no affirmative release, that there is no waiver, so I guess at

1 this point it is what it is. The document is its best
2 evidence, and --

3 THE COURT: So if, for example, tomorrow Mr. Allison
4 finds \$20,000 that Mr. Milanowski received from Diversified
5 Trust Funds for no disclosed purpose -- in other words -- or
6 contrary to a contract. Let's say that the contract said it
7 was to go to A and he took it.

8 Would you argue that they could not -- if they brought
9 suit, would you argue release or forbearance?

10 MR. WALKER: Well, my understanding is this
11 stipulation deals with Investment Partners and the money that
12 went in there. I don't --

13 THE COURT: All right. Let me rephrase the question
14 then. That's fair.

15 MR. WALKER: And so it was not Mr. Milanowski.

16 THE COURT: So Investment Partners. So if Investment
17 Partners -- if he found money that Investment Partners received
18 that was previously not disclosed, would you assert forbearance
19 as a defense or a waiver of release?

20 MR. WALKER: I believe Mr. Milanowski has agreed that
21 if there's any legitimate amounts that Mr. Allison finds that
22 were owing from Investment Partners that he will stand up and
23 acknowledge that debt. So I do not believe --

24 UNIDENTIFIED SPEAKER: Is that no?

25 MR. WALKER: -- that this would be a forbearance or a

1 waiver of any additional claims.

2 THE COURT: Now -- okay. Thank you.

3 MR. WALKER: Thank you.

4 THE COURT: Other --

5 (Colloquy not on the record.)

6 THE COURT: Wait. Mr. Gordon and --

7 MS. JARVIS: Well, I just want to clarify this.

8 There is -- as he stated, there was a release requested.
9 It was refused. There is no release in this agreement, and as
10 Mr. Schwartzer pointed out, in the security agreement it
11 clearly identifies there could be other amounts owed that are
12 not subject to this promissory note, and if, you know,
13 Mr. Milanowski is now saying that somehow that it wasn't
14 clearly agreed that there is no release of any other claims and
15 that this is, you know, confined to this amount and is not, you
16 know, a compromise of any amounts, then, you know, we'll pull
17 it off the table because we are not seeking for, you know, any
18 agreement other than what we had negotiated for what is -- we
19 believe is in these documents which is no release and an
20 acknowledgement that there may be other amounts owed.

21 THE COURT: Okay.

22 MR. GORDON: Maybe we should short-circuit this
23 because counsel for Mr. Milanowski was very careful in talking
24 about the document speaks for itself.

25 If we go to the promissory note and we go to the very first

1 line, it says, "For value received in an attempt to compromise
2 a disputed claim, USA Investment Partners promises to pay to
3 the order."

4 I agree there's no release language, but I'm looking at
5 that language and saying in an attempt to compromise a disputed
6 claim, I think this is, and I think that's exactly what counsel
7 was talking about, and I think that's what counsel was focused
8 on, that very first line.

9 My problem with this -- and in some ways it doesn't really
10 involve the direct lenders, but it does because our opposition
11 to this was very limited.

12 It basically said, look, we're somewhat offended by the
13 fact this is a 9019 compromise in one form or the other because
14 there's a forbearance here, and it is an agreement to take a
15 security interest, but there's no evidence for it.

16 We didn't meet the A&C Property standard. We're once again
17 rushing in on a week's notice with woefully inadequate
18 declarations, et cetera.

19 But our opposition was limited, and we basically say, look,
20 we as direct lenders, we may have -- some of the direct lenders
21 have their own guarantees. We just want to know that if you're
22 locking up these assets that there's no court order, there's no
23 court decision -- and I think Mr. Hermann commented on this and
24 really kind of addressed it -- that impairs our right to
25 basically claim at some future date that this is an avoidance,

1 that this is subject to an avoidance action against US Partners
2 (sic) or is a fraudulent transfer if US Partners (sic) goes
3 into a bankruptcy, whatever.

4 It's simply a decision --

5 THE COURT: You mean Investment Partners.

6 MR. GORDON: Investment Partners. It is simply
7 between --

8 THE COURT: Oh, it is USA Investment Partners.

9 MR. GORDON: Yes. It is --

10 THE COURT: I apologize (indiscernible).

11 MR. GORDON: -- USA Investment Partners.

12 This is simply between these parties arriving at a deal.

13 But last night -- maybe no one's talked about it -- I
14 looked at the Liberty Bank opposition that was filed, and I'm
15 looking at it going what is this. Who is Liberty Bank?

16 And what Liberty Bank says is --

17 THE COURT: Who shot Liberty Bank? Oh.

18 MR. GORDON: But, you know, also one thing going
19 through my mind, Judge, is that when you see our fee
20 applications in several months, that for today when you see
21 that entry for nine, ten hours, you're going to remember this,
22 please.

23 But going back, Liberty says that Debtor USA Commercial
24 Mortgage and Nondebtor USA Partners each guaranteed as sureties
25 a \$10,000,000 receivable loan from Liberty to HMA made on or

1 about November 15th, 2004, and HMA is one of the entities
2 that's membership interest is going to be collateralized.

3 The Liberty loan provided financing for HMA Sale a
4 timeshare interest at the Royal Resort & Hotel located at
5 99 Convention Center Drive, and that apparently is a pot of
6 assets we've heard about.

7 And then it goes on in connection with this guarantee of
8 the Liberty loan, USA Partners (sic) agreed to subordinate its
9 claims and rights against HMA until the Liberty loan was paid
10 in full pursuant to section 9 of the USA Investment Partner's
11 guarantee in a separate subordination agreement.

12 USA agreed to subordinate its claims and rights against
13 HMA. That sounds like a lien of some sort or claim against
14 membership interest for \$10,000,000.

15 And when I look at the security agreement -- and this is a
16 well-drafted security agreement -- and you go to the security
17 agreement, we have in there reps and warrants, and one of the
18 reps and warrants is clearly "Debtor" -- USA -- "further
19 represents" -- this is paragraph 8 on page 4 -- "represents
20 warrants secured by the following: Debtor is the owner and has
21 all rights empowered to transfer the collateral free from any
22 rights or claims of any person. The security is created by
23 this agreement and other liens permitted by secure party in
24 writing and the provisions" -- it goes on.

25 And what it basically says is we have full rights to our

1 membership interest in HMA. We haven't granted any other
2 security interests other than you know about, and we're not
3 going to.

4 Well, it comes down to this. There's an agreement to
5 forbear. Do I believe a lockup is a good thing? Yes, but I
6 really get to the forbear. We're going to forbear for a year.

7 First of all, we're compromising apparently. We're
8 agreeing to forbear for a year with the expectation that we're
9 going to collect all these moneys. From what? We don't know.
10 Is it from the Royal? If it is, we have this claim for
11 \$10,000,000 which apparently no one knew about. It's not
12 listed.

13 First of all, it's a guarantee by USA Capital Mortgage.
14 That's a pretty big unsecured claim that I don't think is on
15 the schedules and clearly could be a member of the Unsecured
16 Creditors Committee given the size.

17 I'm just saying I don't know what we're doing here. Why
18 are we here on such short notice agreeing to documents that I'm
19 not sure the debtor truly appreciates what they're agreeing to.
20 I just think that this is premature. It may be the appropriate
21 thing to do, but at this moment it's premature.

22 THE COURT: Okay.

23 MS. KARASIK: Well, I guess it's good evening,
24 your Honor. Eve Karasik, Stutman, Treister & Glatt on behalf
25 of the First Trust Deed Committee.

1 I'll keep it short. I actually came in here today
2 thinking, okay, our big issue here was to make sure that USA
3 Commercial Mortgage as the payee on the note would hold it in
4 trust for everybody. Let's deal with it that way.

5 Let's make sure there's no allocation. Let's make sure
6 there's no disposition until we know who really should get this
7 collateral because not only is there an issue as to the
8 \$58,000,000 transfer, it could be limited collateral that
9 Investment Partners has and Milanowski and others, and even
10 Investment Partners may have guaranteed.

11 Actually, we know Milanowski did guarantee a whole host of
12 loans. So why should all the collateral be used for this
13 particular transaction?

14 But having listened to the argument today, I don't even
15 know if I could just support this at all on that basis. I just
16 don't think we know enough about it. It doesn't sound like
17 it's been well thought through.

18 And even though I would love to tie these people up the
19 best that we can, this entity up and Milanowski up, I don't
20 know if we can do that today based on what we've heard in
21 court, especially based on what Mr. Milanowski and Hantges'
22 lawyer said in court today.

23 THE COURT: Okay.

24 MS. KARASIK: Thank you, your Honor.

25 THE COURT: Mr. Landis. Oh, sorry.

1 MR. GOCHNOUR: It's okay.

2 Good evening, your Honor. Wade Gochmour of Haney,
3 Woloson & Mullins on behalf of Liberty Bank.

4 I think Mr. Gordon hit pretty much on the topics that we
5 were most concerned about was the fact that what happened here
6 is Liberty Bank has a loan to HMA Sales. HMA Sales is -- the
7 sole member of HMA Sales, LLC, is USA Investment Partners, LLC.

8 THE COURT: So the sole member of HMA (sic) is
9 Investment Partners.

10 MR. GOCHNOUR: It's HMA Sales, LLC, your Honor --

11 THE COURT: Okay.

12 MR. GOCHNOUR: -- is the entity, and the sole member
13 of that entity is USA Investment Partners, LLC, which is owned
14 by Mr. Milanowski and the other gentleman's name. I'm sorry.

15 USA Investment Partners as well as USA Commercial Mortgage
16 were both guarantors on that loan. So we kind of are in a
17 strange position of, yes, we're a creditor in one respect, but
18 that's really not why we're here.

19 Why we're here is because we're a little more concerned
20 with the fact that -- and I'll tell you the exact date,
21 your Honor, as we attached to our objection.

22 On July 6th of 2005, USA Investment Partners executed a
23 subordination agreement where they agreed that they would
24 subordinate any rights they have to receive any moneys from
25 HMA Sales until and in such time as Liberty Bank was fully paid

1 on the loan that it had made to HMA Sales.

2 It's very clear, your Honor, and what we are terribly
3 afraid of is the way that this is set up, your Honor. It is an
4 impairment of our right to that subordination.

5 It's very clear, your Honor, and, in fact, I'd even point
6 to the debtor's reply brief, paragraph 12, where it talks
7 about, "The promissory note and security agreement provide an
8 avenue for the debtors to claim the benefits of creditors to
9 the funds that would be owed to Investment Partners from the
10 sales of those real estate developments." That would naturally
11 include the loan that we've made to HMA Sales.

12 So, your Honor, we have a real problem with this just from
13 that respect. We're a little bit different. Honestly, you
14 know, I don't think that Liberty Bank necessarily has a problem
15 with the transaction that's stated just as long as it's
16 conditioned upon the fact that our subordination is superior to
17 any rights of the security agreement given to the debtors.

18 With that said, you know, I think --

19 THE COURT: How much is the collateral worth at the
20 -- assuming -- in your position? How much is your position
21 worth?

22 MR. GOCHNOUR: Your Honor, I'm not sure because I'm
23 just local counsel, and I just got involved yesterday.

24 THE COURT: Okay.

25 MR. GOCHNOUR: So I'm honestly not -- and I'd hate to

1 misrepresent --

2 THE COURT: Okay.

3 MR. GOCHNOUR: -- what it actually is.

4 But, again, going back, I think we had some of the same
5 general issues about the timing of this and how it happened,
6 but, honestly, our big concern is just the impairment of our
7 security interest.

8 So thank you --

9 THE COURT: Okay.

10 MR. GOCHNOUR: -- your Honor.

11 THE COURT: Mr. Landis.

12 MR. LANDIS: I can think of about 10,000,000 reasons
13 why Mr. Milanowski would like for the \$58,000,000 paid on these
14 deals, but that's not the issue here.

15 It is interesting that all the time he's been saying that,
16 he never did ink the deal with the Division of Mortgage Lending
17 that we read about in the paper regarding the Palace Hotel or
18 the Royal Hotel, but that's an aside.

19 The easy decision in this case, Judge, and you heard it
20 from the initial argument from the Diversified Trust Deed is,
21 oh, let's just do the deal. Let's just get it done now, and
22 then we'll worry about the problems later. The difficulty is
23 you can't really do that.

24 A couple of things. Nobody --

25 THE COURT: There you are with the law --

1 MR. LANDIS: I know.

2 THE COURT: -- again.

3 MR. LANDIS: I'm going to be fast. It's late, and I
4 don't want to bore you, but there's a couple of things you need
5 to be aware of.

6 First of all, we don't dispute that there was hard-fought
7 negotiations. I think Mr. Allison has done that. I think he
8 has done the best he can, but there's got to be more than that
9 that you're aware of in order for you to affirm the compromise.

10 You've got to look at the fairness of the deal, and the
11 trustee has the burden on that issue, and that's A&C
12 Properties, and that is Ninth Circuit law.

13 The Court, you know, here has to look at a number of
14 issues. You've got to look at the probability of success if
15 there was litigation with respect to the underlying claims that
16 are supposed to be documented through this promissory note, and
17 nobody's really explained why you need that if you have an
18 immediately-collectible account receivable, but --

19 THE COURT: That was my question which I forgot to
20 ask. Thank you.

21 MR. LANDIS: The second one is the difficulties to be
22 encountered in the matter of collection -- and we don't know
23 about that really -- the complexity of the litigation involved,
24 the expense, inconvenience, and delay necessarily attending it
25 -- if we're talking about true collection work, it's not all

1 that complicated -- and the paramount interest of the creditors
2 and a proper deference to their reasonable views in the
3 premises. We've laid all that stuff out in our objection.

4 Basically, what it boils down to, Judge, is what you're
5 being asked to do is that you're asked to just approve this
6 thing right now because they say it's important, and they got
7 to do it fast, and I think you really ought not do that.

8 You can't just accept the word that it's a good deal.
9 There's some collateral here. You ought to go forward and just
10 approve this deal. You shouldn't do it.

11 A bankruptcy judge needs to apprise him or herself of all
12 facts necessary to evaluate the settlement and make an informed
13 and independent judgment. There is no way on this record you
14 can do it.

15 Here's some things you don't know. What's the
16 collateral worth? Who's involved in these LLCs? Why is it
17 that of the LLCs that are the collateral one of them -- and I
18 use collateral in the very loosest of sense.

19 Why is it that HMA Sales, LLC, is subject to other
20 people's claims and nobody bothered to tell you about that in
21 connection with the settlement agreement?

22 How much money is the collateral worth over existing
23 liens? Are you really getting a nickel's worth of collateral
24 for all this stuff or are you just giving up the opportunity to
25 pursue \$58,000,000 for a year without there being a dollar that

1 goes to the investors who haven't got any money in connection
2 with these estates?

3 You don't have an evidentiary record before you,
4 notwithstanding Mr. Allison's declaration, that gets anywhere
5 near enough to allow you to make an informed and independent
6 judgment about whether or not this is a good deal.

7 You got to talk about well-reasoned conclusions arrived
8 after comprehensive consideration of the factors and mere
9 boilerplate approval unsupported by evaluation of the facts
10 (indiscernible). That's what you're being asked to do is the
11 latter.

12 What we have suggested is that this ought not be approved
13 simply because you don't have enough information. And at a
14 very minimum, if you are interested in considering this further
15 -- and we would suggest that -- we'd understand if you decided
16 that you didn't want to waste anymore time with it, you
17 certainly ought to let parties in interest conduct enough
18 discovery to figure out whether or not this makes any sense at
19 all.

20 I have more I could talk about, but my paper is laid out
21 for you, Judge. It's late, and I'm tired, so are you.

22 Thank you for your time.

23 THE COURT: Thank you.

24 MR. CHARLES: I hear a very good lawyer say things in
25 a conclusory way, and I just don't get it. Today, you know you

1 have some debt that is acknowledged by a writing in the amount
2 of 58,000,000 and change.

3 Today, you know that debt is unsecured with respect to USA
4 Commercial Mortgage, and, apparently, the financing statement
5 with respect to some of the collateral was only just filed as
6 to 10-90.

7 So today you know that unless this is approved and the
8 debtor proceeds, we have some debt. It's at least 58,000,000
9 which apparently the suggestion is, well, go sue on it and see
10 if you can turn that into a judgment that you can get into --
11 an execution lien that you can get into a position of priority
12 when you know there are guarantee claims coming from the
13 lenders, when you know Liberty Bank says the loan's in default,
14 and they're coming for their \$10,000,000.

15 I do not understand why it is a -- what the risk is of
16 saying we will take this collateral. The only risk is one that
17 I think with respect you made up, and it's the merger or waiver
18 argument.

19 And, largely, that's the intent of the parties. And the
20 way this was explained and presented in the court, the debtor
21 has clearly said that's not their intent.

22 And when you asked the lawyer for Investment Partners to
23 give you his blanket assurance, he would not. But for that
24 dialogue, there isn't waiver or merger here, and it's
25 disclaimed in the debtor's papers.

1 So with respect from the unsecured-creditors' perspective,
2 we would very much like to see the debt liquidated and get what
3 security there is here.

4 THE COURT: But what if the collateral is worth minus
5 \$15 and --

6 MR. CHARLES: If --

7 THE COURT: But the point --

8 MR. CHARLES: Go ahead.

9 THE COURT: But the collateral is worth minus \$15.
10 And let's assume that the day after it's signed they realize
11 it's worth minus 15, so it's not worth anything. Is not the
12 debtor precluded from suing on that \$58,000,000 for --

13 MR. CHARLES: A year.

14 THE COURT: -- a year?

15 MR. CHARLES: Yes.

16 THE COURT: So isn't that information we need to
17 know? For example, if the collateral is worth \$20, maybe the
18 risk of forbearing for a year is worth it. But if we don't
19 know what the collateral is worth at all, how can I make that
20 informed judgment?

21 MR. CHARLES: The only marginal question I think that
22 your question presumes is is there anything you left on the
23 table, Mr. Allison. Because if they took everything that he
24 thought had any value and the collateral is worth nothing, then
25 there's nothing to be gained from suing them.

1 So the question to Mr. Allison is as part of this, did you
2 leave anything on the table that we ought to be suing about to
3 get a judgment lien or some other kind of interest. If the
4 answer is no, then you don't care what the collateral is worth.

5 We sure hope it's worth something, but we got what we
6 could, and I hope we got a leg up on everybody else.

7 THE COURT: We don't have in here any real property
8 owned by the debtor.

9 (Colloquy not on the record.)

10 MR. CHARLES: And that's the question. Did you leave
11 anything --

12 THE COURT: Correct.

13 MR. CHARLES: -- on the table, Mr. Allison?

14 THE COURT: Now it may well be that this debtor --
15 well, the allegation is the debtor doesn't own, debtor meaning
16 Investment Partners, doesn't own any real property but only
17 owns membership interest, but we don't know that, correct?

18 MR. CHARLES: Ask him. Ask Mr. Allison.

19 THE COURT: Okay.

20 MR. CHARLES: It's a one-line question. Is there
21 anything that you know about that you left on the table.

22 THE COURT: Okay. Thank you.

23 MR. CHARLES: Thank you.

24 MS. JARVIS: Your Honor, Mr. Allison would be glad to
25 answer that question. We didn't, you know, proffer his

1 testimony because it's late, and I thought we could rely on the
2 declaration. I didn't think there were a lot of objections to
3 it because I think the creditors --

4 THE COURT: Sure. No. I appreciate that.

5 MS. JARVIS: -- agreed, you know, but that question,
6 you know, can certainly be answered by him.

7 I also have assurance from Mr. Walker that he will
8 represent on the record that he agrees with my statement that
9 this is not a release of any claims.

10 There is no, you know, compromise of any additional
11 claims, and it's without, you know, a waiver of any rights to
12 go after any other claims we may find, and, in fact, we can put
13 that in the order to make certain.

14 But he can confirm our representation that this was not a
15 compromise of any claims that we didn't know about. It was
16 simply a documentation of the receivable that we determined on
17 the books.

18 THE COURT: Okay.

19 MS. JARVIS: And so I would ask him to make that
20 representation. Then I would be glad to have Mr. Allison
21 answer the one question.

22 THE COURT: All right.

23 THE WITNESS: Do you want me to come back up on
24 the --

25 THE COURT: We'll you're still under oath, so I'll

1 let you stay there.

2 THE WITNESS: Thank you, your Honor. Perhaps just to
3 make a quick statement.

4 When I looked at the receivable at -- on Commercial
5 Mortgage when I came into the company, I saw it was about a
6 \$48,000,000 receivable. We did a substantial amount of work on
7 it, and that's where got the number up to 58.3 million.

8 When I saw the issues that existed at -- with Mr. Hantges
9 and Milanowski, I thought it was in the best interest of the
10 estate to take what was an unsecured receivable at
11 Investment Partners and secure it.

12 Unfortunately, Investment Partners has to the best of my
13 knowledge and the best of my investigation only equity
14 interests in various -- various equity shares in -- in various
15 projects.

16 We took the projects that were available including the
17 Royal Hotel, Oak Valley, Stoneridge, Rapar Ranch (phonetic),
18 and Placer Vineyards.

19 All those projects are land projects -- most of them are
20 in southern California -- and took their equity interests and
21 put a secured lien behind it.

22 We know that Mr. Hantges and Milanowski have issues, and I
23 wanted to get these debtor entities in first position.

24 THE COURT: You know, I forgot to ask an important
25 question, and this has to be asked of one of the counsel, and I

1 don't mean to interrupt, but, you know, this late. I'll forget
2 it.

3 By getting these membership interests, do we know from
4 looking at the LLCs whether you get the voting rights as well?
5 Are the voting rights assignable as a security or not? And if
6 you don't get the voting rights, then if you're not the full
7 member, how do you exercise the right to foreclose on the
8 collateral?

9 (Colloquy not on the record.)

10 THE WITNESS: They aren't the majority member in most
11 of these cases, your Honor.

12 (Colloquy not on the record.)

13 THE WITNESS: Again, what I was trying to do is take
14 a position that where I could try and improve our position,
15 improve the estate's -- my -- my intent was to improve the
16 estate's position from the outset.

17 THE COURT: Of course.

18 THE WITNESS: And to -- and -- and when I look at in
19 going through the questions that are asked here, my intent was
20 to -- was to improve the position vis-à-vis anybody else that
21 could be coming against -- against Mr. Hantges and Milanowski
22 and get our -- get our estate in first position.

23 The -- I think those are -- giving those as my intent, and
24 I want to share with the Court, when I -- when I look at the --
25 I'm the responsible -- responsible party for the debtor

1 entities.

2 And what I wanted to do is bring these assets into the
3 debtor entities, and we've been very clear with the committees
4 that we can figure out what to do with them, but I wanted to be
5 in first place and be in a position to at least have them in a
6 place to be monetized.

7 You know, I -- I -- I can't speak to appraisals. I have
8 spoken to the equity partner in -- in one of the projects, Oak
9 Valley. That project has -- the equity value between the two
10 parties is -- is estimated to be \$50,000,000.

11 THE COURT: But the problem is if you don't have the
12 right to vote because you're only assigned the interest,
13 whether or not you're a minority or majority, how do you ever
14 realize in the collateral?

15 MS. JARVIS: Your Honor, what he has is a right to
16 the distributions in essence on the ownership interests --

17 THE COURT: But what --

18 MS. JARVIS: -- or to --

19 THE COURT: -- if the --

20 MS. JARVIS: -- or to --

21 THE COURT: -- managers --

22 MS. JARVIS: -- foreclose on those.

23 THE COURT: -- decide not to do any distributions?

24 THE WITNESS: The -- and -- and, your Honor, just to
25 maybe go --

1 THE COURT: Trust me. I've seen this happen in a
2 nasty case I had involved in this court, and it created quite a
3 conundrum.

4 I'd already ruled, but I think I published an opinion that
5 said that based upon the agreement, if you got assignment of
6 the rights, you didn't necessarily -- oh, I know. It was a
7 foreclosure.

8 So that's the concern.

9 THE WITNESS: Okay. And, your Honor, I -- I -- I
10 have been in discussions on a couple of the projects that are
11 in the line of sight going to be -- that are -- that are in
12 process to be monetized. Both partners are -- have the project
13 up for the sale, and I wanted to get -- I wanted to be in a
14 position to bring that cash back into the estate as quickly as
15 possible.

16 And if we're ready to go through what was on my mind, my
17 mind was to -- to get first in line to get the cash and bring
18 it back in the estate when it got the for-sale sign on the
19 property.

20 THE COURT: Okay. But you don't have any idea, do
21 you, how much that collateral is worth?

22 THE WITNESS: The -- there's certain pieces I can
23 give --

24 THE COURT: I mean --

25 THE WITNESS: -- an idea.

1 THE COURT: -- the debtors -- I'm sorry. The
2 collateral that we have that the debtor would have.

3 THE WITNESS: I can give you -- I can --

4 THE COURT: This debtor.

5 THE WITNESS: -- go through pieces of it, your Honor,
6 and pieces of it I'm waiting for appraisal on.

7 On the Oak Valley transaction, Oak Valley they're -- they
8 -- we have -- Investment Partners has a 50-percent equity
9 interest in a -- in a parcel of land. That parcel of land has
10 a value of \$75,000,000. USA Commercial Mortgage --

11 THE COURT: But what's the debt?

12 THE WITNESS: Let -- let me -- I was just going
13 there.

14 THE COURT: Oh, I'm sorry.

15 THE WITNESS: USA Commercial Mortgage has a
16 20,000,000 -- 20.9-million-dollar loan on the property, and it
17 is in arrears of interest about \$4,000,000, so in round
18 numbers, there's \$25,000,000 today of debt on the property, and
19 that -- that's controlled by USA Commercial Mortgage or -- and
20 the debt lenders.

21 THE COURT: So you're going to be foreclosing on
22 yourself.

23 THE WITNESS: Well, the -- moving forward on that,
24 that's -- well, that's part of why I wanted to try and get a
25 DIP in place, so I didn't mean to say it that way, but what I

1 was trying to do is making sure I have the ability to go
2 forward.

3 Investment Partners, the value of the property that's
4 underneath or the equity value in the land underneath it, is
5 approximately \$50,000,000, so the value of the entire project
6 is \$75,000,000, so -- and I know that there's a for-sale sign
7 on the property. I wanted to be first in line to -- to -- to
8 have 50 percent of the proceeds brought into the estate.

9 With respect to the Royal Hotel, the Royal Hotel is under
10 -- is under a negotiation for sale. I've talked to the
11 financial advisors last week that are -- that are -- that are
12 working with the -- the -- the buyer of the hotel. The Royal
13 Hotel purchase price is \$29,000,000, so I have an idea of what
14 the value of the Royal Hotel is from a purchaser or from a --
15 from a sale price.

16 THE COURT: But you're subordinated to Liberty.

17 THE WITNESS: I -- I understand that. I -- I think
18 there may be other -- there may be other problems as well that
19 we're working on.

20 But the -- the point is that we know the property is up
21 for sale, and, again, what I wanted to do and my intent was to
22 be, you know, in line to get some of that money and have a lien
23 in place to do it, so my intent was to put ourselves in a
24 position to get money back into the estate.

25 THE COURT: Okay.

1 THE WITNESS: Okay. And so if I can share with you
2 the -- the strategy on the other transactions, Placer,
3 Rapar Ranch. Rapar Ranch should be money good as well, and we
4 have a minority interest in that.

5 But what I've been told -- and, again, I haven't an
6 appraisal to bear it out, your Honor, but Rapar Ranch has a
7 value of between 150- and \$200,000,000 when it's closed and
8 Investment Partners has a third of that, so somewhere in the
9 area of \$50,000,000 of value.

10 Again, what I'm trying to do -- what I was trying to is
11 get in line to that Rapar Ranch. It probably won't monetize
12 during the -- during the next 12 months, but it's -- it's --
13 it's a project that's close to completion, and I wanted to have
14 this debtor in line to get money back into the estate. So by
15 line of sight and looking at various transactions that I've
16 looked at over on the Investment Partner's side where we don't
17 have -- where the -- not we, but Milanowski and Hantges don't
18 have control but negotiated an equity participation in some
19 way, shape, or form, I wanted that brought back into this
20 estate.

21 THE COURT: And when you talk about, quote,
22 compromising this particular 58,000,000 in debt, could you
23 articulate exactly what that kind of debt was so that we can
24 articulate it's that number we're dealing with and not some
25 other larger unknown number?

1 THE WITNESS: The -- the --

2 THE COURT: Is there a way --

3 THE WITNESS: -- number --

4 THE COURT: -- to articulate that?

5 THE WITNESS: The \$58,000,000, your Honor, was after
6 I did some thorough look at that receivable as I -- as I shared
7 with your Honor when we came in. The books and records had it
8 in the 40s.

9 We worked and what -- we looked very carefully as to what
10 should have been in that receivable, and, unfortunately, we
11 looked at a receivable that was sitting there for some period
12 of time with -- where there was no repayment.

13 And so I looked at this receivable that went over to
14 Investment Partners that had no interest rate, had no, you
15 know, that there was nothing coming back to the estate other
16 than a receivable that had been sitting out there for some
17 years.

18 THE COURT: But we have the ability to define exactly
19 what number it is --

20 THE WITNESS: Yes, your Honor.

21 THE COURT: -- that is being --

22 THE WITNESS: There --

23 THE COURT: -- quantified.

24 THE WITNESS: What we -- what we looked at was --
25 what we quantified was what we could find that was owing to --

1 to Commercial Mortgage from Investment Partners, and that's the
2 -- that's where we came to the round number of --

3 THE COURT: Okay.

4 THE WITNESS: -- 58.3 million dollars.

5 And by doing that, that's -- you know, and we did that
6 with some work on our part to take a number and actually
7 increased it.

8 And then what I wanted to do, the other parts to it for my
9 intent, was is to put some incentive on Milanowski and Hantges
10 by creating an interest rate on a -- on a receivable that had
11 no interest rate and had no maturity to -- to incent him to get
12 it paid down and have a paydown incentive or it doesn't -- or,
13 you know, to -- to move forward where we foreclose on
14 everything.

15 THE COURT: Okay.

16 THE WITNESS: So I was trying to create a -- a
17 vehicle that we could bring moneys back into the estate and
18 take a receivable that was there and -- and put it into a
19 document that had a bit more teeth to it.

20 THE COURT: Okay. Thank you.

21 THE WITNESS: Thank you, your Honor.

22 THE COURT: Did you want to add anything --

23 MS. JARVIS: Yeah.

24 THE COURT: -- else?

25 MS. JARVIS: So I think the answer to that question

1 is there, you know, there is. They've gotten what they can get
2 out of here.

3 And he did some due diligence in, you know, that there is,
4 you know, a reason for the compromise. He carefully looked at
5 it in that this does benefit the estate and does meet the
6 standards of TMT (phonetic). I would ask Mr. Walker just to
7 confirm --

8 THE COURT: Okay.

9 MS. JARVIS: -- you know, our understanding.

10 MR. WALKER: Your Honor, just briefly on a couple of
11 points. Our position is Liberty Bank is in first position, but
12 this stipulation doesn't affect that subordination agreement.

13 THE COURT: Well, isn't your warranty then wrong on
14 your security agreement?

15 MR. WALKER: I don't believe so.

16 THE COURT: Or am I misreading it?

17 MR. WALKER: If --

18 THE COURT: Maybe --

19 MR. WALKER: If --

20 THE COURT: -- not.

21 MR. WALKER: Yeah. I think it's all right. We can
22 certainly clarify that in the order.

23 Secondly, I do agree with what Ms. Jarvis said with
24 respect to the language. It said this amount was a specific
25 amount as Mr. Allison testified was on the books, and he

1 increased that amount.

2 And so it's our agreement that we agree to repay that
3 amount, and this stipulation does say -- when I said we were
4 bound by the terms of the stipulation, it says and any other
5 amounts that Mr. Allison determines, so we're not intending it
6 to be a blanket waiver release of those claims.

7 And the final point is that our representation was that
8 the value of the assets that we are pledging far exceeds the
9 amount of the debt in the promissory note, so that's consistent
10 with what we've said.

11 THE COURT: Okay.

12 MR. WALKER: In that regard, we ask the Court to
13 approve it.

14 THE COURT: All right. Any other comments?

15 MR. LANDIS: One other thing expressly from the
16 security agreement. You've indicated already you don't know if
17 you've got the voting rights.

18 You also need to be aware of the fact that under Section 8
19 of the agreement, page 4, paragraph 8-A two little I's,
20 "Subject to the provisions of the operating agreements of the
21 LLCs."

22 It very well may be that there is a limitation on the
23 ability to alienate these provisions. We don't know, and
24 nobody's come up with any of the operating agreements, Judge.

25 You're being asked to take this on faith that there's

1 value to these assets, that there aren't competing claims, that
2 the operating agreements don't get in the way.

3 I've already given you the law. I won't do it twice, but
4 I've been accused of being sparse. I'm going to continue being
5 that way.

6 The only other thing we ask, Judge, and we've asked for it
7 in our prayer -- and I want to be very clear on the record --
8 is that in the event that you believe that you have enough
9 information before you, notwithstanding the fact you haven't
10 seen an operating agreement, notwithstanding the fact that
11 nobody can tell you if the voting rights are part of this deal,
12 notwithstanding the fact that you don't know whether or not
13 there are restraints on alienation of the membership
14 agreements, notwithstanding you don't know what claims are
15 being compromised, what the nature of those claims were, if you
16 decide that you've got a sufficient record here, please, if the
17 order comes through, make it so that it's not binding on
18 successors in interest to this estate.

19 Thank you, your Honor.

20 THE COURT: Okay. Did --

21 Mr. HERMANN: Your Honor, I've done a lot of lending
22 work, and I'm sure that there are other people in the courtroom
23 that have, also. And when you're confronted with a situation
24 like this, you know that it's going to be a race to the assets.

25 You have a borrower that has assets that are currently

1 unpledged, and there's going to be a race, and there are going
2 to competing creditors.

3 And so you've got some constituency standing up today --
4 certainly not the U.S. Trustee's Office -- but you've got other
5 standing up today who are probably competing creditors, and
6 they're saying don't approve this, don't approve it, we don't
7 have enough information.

8 We could work this by drilling down to values, drilling
9 down to operating agreements, drilling down to alienation
10 provisions in the operating agreements, and we could come up
11 with perfect information. But in all likelihood, it's going to
12 be too late because someone will have beat us in line.

13 And so I think that what you have to do is say as the
14 counsel for the Unsecured Creditors Committee said, if there's
15 nothing left on the table, and you've got a debtor who is
16 willing to in effect confess a judgment, who is even willing to
17 secure the judgment without having to go sue on it, it's a good
18 deal, and we could take the time to get more perfect
19 information.

20 I'm guessing that the operating agreements do have
21 restrictions upon transfer.

22 There's a provision of the security agreement that
23 obligates Investment Partners to use their best efforts to go
24 out and get all this blessed by the LLCs. They have a majority
25 interest in many of the limited liability companies. They may

1 get that done, they may not get it done, but the alternative is
2 letting someone else jump in line to these assets or having the
3 estate go out and sue for a year.

4 Now, I looked at the Liberty Bank documents. There's no
5 security interest there. I looked for a negative pledge.
6 There's no negative pledge there.

7 And so I don't know what the analysis is under state law
8 if I as a creditor of Investment Partners perfect a lien
9 against Investment Partner's membership interest in HMA Sales,
10 and Liberty Bank has a guarantee outstanding and a
11 subordination of distributions, but that should just -- the
12 chips should fall where they may on that.

13 THE COURT: I think my new judge would love to hear
14 that case.

15 (Colloquy not on the record.)

16 Mr. HERMANN: In any event, if I'm a creditor, I'm
17 not going to turn it down because I say, you know, I'm getting
18 collateral, but I don't know if Liberty Bank has a prior lien
19 or not.

20 If I look at what I'm giving up, what am I giving up? I'm
21 giving up a year's forbearance. It's going to take me a year
22 to sue the borrower and try to get a liquidated amount by way
23 of a judgment. I'm getting that on day one under this deal.

24 So I think even though the law cited by the U.S. Trustee
25 is correct, what you have to balance off is what is the estate

1 giving up? It's not giving a release, it's not compromising
2 the amount of the debt, apparently, and all it's giving up is a
3 one-year forbearance.

4 It's going to take a year to get the estate into a
5 position where the estate can get a nonconsensual lien against
6 these assets. We're getting it right now. It's a no-brainer
7 in my opinion.

8 Thank you, your Honor.

9 THE COURT: Okay. All right. I'm going to approve
10 the motion on the following conditions, and then I'll give you
11 my findings and conclusions. The following conditions are in
12 no particular order.

13 That the particular LLCs permit the alienation of the
14 membership interest at least insofar as distribution. Now,
15 it's my understanding that under the uniform law that even if
16 the members don't consent, that the assigning members -- what
17 happens is you get the distribution rights, although you
18 wouldn't have the voting rights, so that shouldn't be an issue.

19 But we don't know what states we're talking about. We
20 don't know if they've got the uniform laws. We don't know if
21 they're really LLCs.

22 So one of the conditions is the assumption that the
23 assignment will at least be permitted and (indiscernible) the
24 estate would receive the distributions.

25 Secondly, that this agreement does not constitute a

1 release of any causes of action against Investment Partners.
2 And that in that regard, all that is, quote, "compromised is
3 the setting of the sum of those particular receivables," and I
4 think you should define exactly what receivables you're talking
5 about.

6 Also, that there's no waiver of any rights by entering
7 into this agreement on behalf of the estate or any of the
8 debtors or any of the other lenders or -- any other lenders.

9 Now, I can approve this, and I very much appreciate
10 Mr. Landis bringing us down to what the law is and the facts
11 that we need to find.

12 Clearly, I cannot rubber-stamp something a trustee says.
13 We know it's hard fought, and, in that regard, I think I very
14 much respect the business judgment of Mr. Allison.

15 Here we have an issue of we have moneys that were
16 apparently clearly owed to the debtor but which was not
17 secured, and my reaction was first much like Mr. Landis'. So
18 what? Go sue on it.

19 But the problem with that is in order -- what we want to
20 secure is the assets, in the meantime. So if you were to go
21 sue on it -- and I have no reason to believe you couldn't file
22 a contract action tomorrow -- you would have to get a
23 prejudgment writ of attachment. Prejudgement writ of
24 attachments are often difficult to get and depends upon a whole
25 series of factual findings.

1 So it seems to me as long as this collateral is worth more
2 than a dollar even, you're better off than you were if you
3 didn't have it as long as the conditions that I've indicated
4 are the case, and those conditions will be because it's only
5 approved on those conditions.

6 So the estate has lost nothing because it would -- in
7 forbearing for a year it would take you a year and/or you'd
8 have the uncertainty about whether or not you could get a
9 prejudgment writ of attachment. Certainly, you couldn't even
10 if you'd come to this Court.

11 You, you know, arguably could go to trial in two months on
12 a contract action, but then you'd have to go chase the assets.
13 It's what everybody who practices bankruptcy understands and
14 state court litigators don't. You might as well be in
15 bankruptcy where you've got someplace where they are as opposed
16 to going to chase assets.

17 So for those reasons, I can approve the agreement on those
18 conditions.

19 All right. We have one more. We have the --

20 MS. KARASIK: Your Honor, I have one --

21 THE COURT: Oh, sorry.

22 MS. KARASIK: -- one issue on the order --

23 THE COURT: Um-h'm.

24 MS. KARASIK: -- I just want to make. Excuse me.

25 (Colloquy not on the record.)

1 MS. KARASIK: I just want to make sure that with
2 respect to the payee being USA Commercial Mortgage, they hold
3 it in trust.

4 With respect to the allocation distribution of proceeds
5 under the security agreement, that they're all held in escrow
6 or in some manner such that nobody's rights are prejudiced with
7 respect to distribution at a future date. If we can have --

8 THE COURT: You know, I have a note which I couldn't
9 read which I now realize says also that the note may be
10 assigned to the other debtors without a breach of the
11 agreement.

12 MS. JARVIS: Your Honor, we've already agreed to
13 that, and I think --

14 THE COURT: Okay.

15 MS. JARVIS: -- probably it would be best if we just,
16 you know, in the order work out a language. We all understand
17 the concept, and we'll work --

18 MS. KARASIK: That's fine --

19 MS. JARVIS: -- with the committees --

20 MS. KARASIK: -- your Honor.

21 MS. JARVIS: -- to reach an agreement on some
22 language in it.

23 THE COURT: Um-h'm.

24 MS. JARVIS: Thank you.

25 MR. GOCHNOUR: Your Honor, I'm sorry. I just want to

1 clarify.

2 With regard to the Liberty Bank, the particular LLCs
3 allowing alienation of the distributions, is that in order to
4 cover what we see and I thought what I heard was admitted by
5 Mr. Milanowski's and USAIP's attorney as a first position?

6 THE COURT: What I mean by that was and my only
7 concern was that, fine, you assign the membership interest, but
8 LLCs generally require that you can't assign a membership
9 interest without the consent of the other members.

10 That's probably obviated with the specific state law which
11 says, okay, fine, it's ineffective to give them voting rights,
12 but it will give you the rights to distribution.

13 But I want to sew up any kind of problem in that regard or
14 defense by the LLCs to which the debtor is receiving the
15 assignment from IP.

16 MR. GOCHNOUR: Okay.

17 THE COURT: So I am not touching in any regards the
18 rights as between Liberty. Liberty -- you know, the parties
19 are whatever they have, they have. I mean, this certainly
20 doesn't affect anybody's priority.

21 MR. GOCHNOUR: Just so I'm clear then, the order that
22 you're making tonight is without prejudice for Liberty to
23 pursue whatever stay --

24 THE COURT: Oh, of course.

25 MR. GOCHNOUR: -- or federal court rights --

1 THE COURT: Of course.

2 MR. GOCHNOUR: -- that it has elsewhere. Okay.

3 MR. LANDIS: And, Judge, just so the record is real
4 clear on the order, also, you indicated no waiver by the
5 estate's debtors or other lenders. That also goes to
6 successors in interest --

7 THE COURT: Yes.

8 MR. LANDIS: -- to the estates and the debtors?

9 THE COURT: Yes.

10 MR. LANDIS: Thank you.

11 MR. CHARLES: I apologize for being difficult. When
12 you say condition, and I'm trying to resist enforcement of
13 this, and I don't even know how to prove what you just said --

14 THE COURT: No. I'm saying this order is approved,
15 if the order is signed, and that means that is the terms of the
16 deal.

17 MR. CHARLES: And so they will -- it will be
18 enforceable. They've said they'll use their best efforts to
19 get that consent. But on behalf of the estate's unsecured
20 creditors, I would rather have an assignment. That is you've
21 approved it. It's effective.

22 We may have to go fight with LLCs about how much I can get
23 for that. But if they can say if I don't consent, it's not
24 effective, oh, good, good-bye, so the notion of condition
25 really concerns me.

1 THE COURT: Oh, I see what you're saying.

2 MR. CHARLES: The agreement says they're going to use
3 their best efforts to obtain consent and get what the -- you
4 know, turn this into a distribution of proceeds.

5 THE COURT: Oh, I guess on the other side what I'm
6 saying is I want to make sure what they're giving is the right
7 to distribution.

8 So it's not a defense as to the LLCs. What I'm saying is
9 -- this is easily resolved by just people looking at their
10 agreements and/or the particular limited-liability law.

11 MR. CHARLES: Just as long as you don't say there was
12 some condition to the effectiveness of the agreement that
13 someone could say it wasn't met and therefore now I don't -- we
14 really don't have lien or security interest.

15 THE COURT: Right. They can't use it as a defense.

16 My condition was just you have told me, Mr. Investment
17 Partners, that you will assign the interest, and you have told
18 me that that means we get a distribution of the proceeds.

19 MR. CHARLES: Understood. Thank you.

20 THE COURT: And thank you for clarifying that.
21 You're right. All right.

22 I guess GSA, we told them 6:00, and they believed us, so
23 it's cut off again.

24 Why don't we come back on -- the only thing left is the
25 committee protocol issues. Do we really need to deal with

1 those? Are those issues still pressing? I guess so.

2 Or have the committees more or less decided among
3 themselves? Do you really need my advice of what is -- how you
4 deal with your committees and what's confidential on 1106?

5 MS. KARASIK: Your Honor, I believe there's two
6 issues of confidentiality here. One is the issue of
7 information from the debtors to the committees and how we
8 protect that.

9 And the debtors have provided us with and have filed with
10 the Court I believe a much more limited definition which is
11 acceptable to First Trust Deed Fund, and I believe the
12 Diversified Fund, too?

13 There's a second part, too, which are committee
14 deliberations and --

15 THE COURT: Okay. I think --

16 MS. KARASIK: -- those issues.

17 THE COURT: -- we're all too tired to do it today. I
18 can offer -- we could squeeze it in tomorrow. You promise this
19 would not take more than an hour, right?

20 MS. KARASIK: Oh, I promise, your Honor.

21 THE COURT: So we could do it tomorrow --

22 MS. KARASIK: Does Greg promise?

23 MR. GARMAN: I think we can do this in five minutes.

24 THE COURT: You lie.

25 (Colloquy off the record.)

1 THE COURT: If you're not all agreed, how is it
2 possible to do any of this stuff in five minutes?

3 MR. GARMAN: Because I think we could put off the
4 issue --

5 THE COURT RECORDER: Counsel, could you --

6 MR. GARMAN: -- we don't agree on --

7 THE COURT RECORDER: -- come to a --

8 MR. GOCHNOUR: -- until a later day.

9 THE COURT RECORDER: -- microphone, please.

10 THE COURT: Okay. You get five minutes and that's
11 it.

12 MR. GARMAN: I'll do better than that.

13 THE COURT RECORDER: And your appearance also,
14 please, Counsel.

15 MR. GARMAN: Greg Garman of Gordon & Silver,
16 committee for -- the Official Committee of Direct Lenders.

17 Your Honor, I think we're in 99-percent agreement that the
18 protocol motion and the 15 procedures we set out to deal with
19 the two issues of solicitation and information provided to our
20 various constituents we agree to.

21 The only issue we have is the new language which was
22 proposed by the debtor last night concerning trade secrets,
23 things of that nature. I believe that's properly addressed in
24 the confidentiality agreement.

25 We have one dispute. I think I can come back to this

1 Court at a later date and get your impressions, but you might
2 just want to deal with it now, and that is we agree with
3 everything they said except for the fact that our committee
4 members won't be provided copies of the Hilco appraisals.

5 I can tee this up by way of a subpoena, and we can do it
6 with a protective order. You can give us some guidance now.

7 But I think that the language to the protocol motion and
8 what it is we're supposed to give to our constituents and get
9 back from constituents we're all in agreement upon tonight.

10 THE COURT: Well, shouldn't they get the appraisals?
11 Why shouldn't direct lenders get appraisals? Because how in
12 the world -- especially those people in these new loans you're
13 talking about.

14 MS. JARVIS: Your Honor, obviously, if there is an
15 issue that comes by before the Court and the appraisals are
16 going to be part of the testimony, those will be made available
17 publically.

18 The issue that came up, and what we've agreed to with the
19 other committees, and my conversations with Mr. Garman this
20 morning is that maybe we can work out something that works.

21 Because those appraisals are primarily used at this point
22 in time for negotiating, for repayments from borrowers, or
23 making decisions, credit decisions on how to proceed forward,
24 they're very sensitive because, obviously, you don't want
25 borrowers knowing what you think the value of this property is

1 while you're trying to work out a workout plan form.

2 THE COURT: So a confidentiality --

3 MS. JARVIS: That's what it's --

4 THE COURT: -- agreement --

5 MS. JARVIS: -- being used for.

6 THE COURT: -- would work for that.

7 MS. JARVIS: Yeah. Right. And that's what I
8 understand.

9 I mean, this list of confidential information that we set
10 out is what we're saying. I think last week the Court said,
11 you know, everything can't be confidential, can you work out
12 something that, you know, really is confidential.

13 So we sat down, thought about it and said here's the
14 things that we think really are sensitive and need to be held
15 as confidential, and that's why those are appraisals are in
16 there.

17 However, there is an exception. What we agreed to -- what
18 the other committees have agreed to, the Executory Contract
19 Committee hasn't yet, but we agree that we would allow those to
20 be for attorneys' eyes, professional eyes only, so that, you
21 know, attorneys and financial advisors can make decisions but
22 they don't become public.

23 THE COURT: Well, appraisals only? I mean, the
24 appraisals --

25 MS. JARVIS: The appraisals --

1 THE COURT: -- will be --

2 MS. JARVIS: -- that deal with their -- yeah, with --

3 THE COURT: But how can you do that when you got
4 these direct lenders, and you're asking them to make these new
5 loans? How can you do that?

6 MS. JARVIS: Alternatively -- well, with the new
7 loans, obviously, those things -- if we are asking for new
8 loans, and we've got -- you know, we're going to base it on
9 appraisal information, that's going to become public
10 information.

11 THE COURT: And why couldn't these individual lenders
12 sign confidentiality agreements?

13 MS. JARVIS: I mean, we could sign confidentiality,
14 you know, agreements. There are issues, too. There's claim
15 (indiscernible) going on. There's a lot of stuff out in the
16 market.

17 So we're just trying to make sure that with respect to the
18 value of, you know, these properties where we're in either
19 sensitive negotiations or we feel like it would harm, you know,
20 the investors to have, you know, information floating around to
21 some but not others, that's it.

22 I mean, that's the issue, and we certainly can discuss
23 that further and see if we can --

24 THE COURT: Okay.

25 MS. JARVIS: -- reach an agreement on the language.

1 We've reached agreement with the other committees.

2 MS. CHUBB: Your Honor, we oppose the appraisals, and
3 you said it was fine for them to get the appraisals. We're
4 paying for the appraisals. We should get to see the
5 appraisals.

6 This whole thing would be a lot simpler if there were a
7 little if not transparency, translucency. We need to see
8 those, and I don't want to have to wait a month now that the
9 appraisals are there. My people cannot make decisions
10 without --

11 THE COURT: Right.

12 MS. CHUBB: -- that --

13 THE COURT: Right.

14 MS. CHUBB: -- information.

15 MR. CHARLES: Your Honor, we have no interest in
16 giving away the family jewels such that the borrowers are going
17 to have an increased bargaining position but --

18 THE COURT: So you would agree that the direct
19 lenders would also sign the confidentiality agreement?

20 MR. CHARLES: I think --

21 THE COURT: You have no problem --

22 MR. CHARLES: -- we can but --

23 THE COURT: -- with that.

24 MR. CHARLES: But 645(b) as well as the loan service
25 agreement obligates the company to give these appraisals to

1 their direct lenders.

2 So I have no -- I, in theory, have no objection to them
3 individually signing confidentiality agreements, but we have to
4 make this information available --

5 THE COURT: Okay.

6 MR. CHARLES: -- to our constituents.

7 MS. JARVIS: Your Honor, one --

8 THE COURT: Uh-huh.

9 MS. JARVIS: One issue that's relevant on this is --
10 I mean, are the direct lenders agreeing they could be
11 surcharged for these? Because remember that was an issue we
12 left --

13 THE COURT: I think we said that --

14 MS. JARVIS: -- later on.

15 THE COURT: -- they're getting it. That's what I
16 certainly thought.

17 MS. JARVIS: Well, I thought you said -- I understood
18 that there was a limitation and that it was, what, \$3500 for
19 any appraisal, and I didn't have a lot of heartburn with that.

20 THE COURT: Great.

21 MS. JARVIS: But --

22 THE COURT: It certainly seems to me that as to each
23 loan, that loan could be surcharged that appraisal. Maybe that
24 can be decided another day, but that just seems -- that's the
25 way the deal was, and I --

1 MS. JARVIS: Well, I can --

2 THE COURT: I agree.

3 MS. JARVIS: -- sure tell you that we're not going to
4 pay for it. We're going to fight about it if we don't get to
5 see it.

6 THE COURT: Exactly. Yeah.

7 MS. JARVIS: Yeah.

8 THE COURT: So I'm going to -- I don't think they
9 should remain confidential. I have no problem if you just sign
10 a very limited confidentiality agreement, you know, just to
11 make -- if nothing else, make them aware, please do not -- and
12 make it simple.

13 Don't make it, you know, too legalese, just simple. This
14 is given for your use, please do not disseminate this to
15 anybody else, you can talk it about it with your attorney, you
16 can talk about it with other direct lenders, but please do not,
17 you know, disclose this beyond that group. Simple, right.

18 MS. JARVIS: Yeah. And, your Honor, that's fine.

19 We would simply ask -- because in some instances like I
20 said there are sensitive negotiations going on -- if those are,
21 you know, particular issues where we don't feel like we can,
22 you know, release them, we'll come in for, you know, a motion
23 for protection order, or whatever we need to do, or we'll reach
24 agreement.

25 But in principle, you know, as long as it's subject to a

1 confidentiality agreement, we can -- you know, we can deal with
2 that.

3 THE COURT: Okay. Ms. Karasik. No. That's just --
4 we also lost all the computer power, so -- oh, Helen, do you
5 still have a computer because mine they told me --

6 THE COURT RECORDER: (Indiscernible).

7 THE COURT: -- I had to log off.

8 THE CLERK: She's on (indiscernible).

9 THE COURT RECORDER: I keep getting network messages,
10 though.

11 THE COURT: Oh, okay.

12 (Colloquy not on the record.)

13 MS. CARLYON: It's all unofficial now.

14 THE COURT: Okay.

15 MR. LEVINSON: I just wanted to address -- this is
16 Marc Levinson for the Diversified Trust Committee -- a point
17 Ms. Karasik raised before that does impact our two committees.

18 We are fine with the new language proposed by the debtor
19 defining confidentiality. Hopefully, your Honor is as well.

20 We would like an add-on to that -- we can worry about the
21 language -- that says whatever is discussed among the members
22 of the committee with their lawyers also is confidential, so we
23 don't have to post that on our Web site, and that would still
24 be confidential.

25 THE COURT: All right. Did you --

1 MS. JARVIS: And, your Honor, just to --

2 THE COURT: -- do that?

3 MS. JARVIS: -- just to clarify. The confidentiality
4 agreement we will workout -- work with the Executory Contracts
5 Committee and see if we can't --

6 THE COURT: Okay.

7 MS. JARVIS: -- reach agreement --

8 THE COURT: But, again --

9 MS. JARVIS: -- on language.

10 THE COURT: -- for the ones that go to the direct
11 lenders, keep it simple. Don't make the standard, you know,
12 don't it make it that lengthy -- just make it a simple one.

13 MS. JARVIS: We will work on an order --

14 THE COURT: Yeah.

15 MS. JARVIS: -- and submit it to you, your Honor.

16 THE COURT: All right. That's it. Now just a few
17 housekeeping, and then I guess we don't have to come back,
18 right?

19 MS. JARVIS: Yeah.

20 UNIDENTIFIED SPEAKER: We're done.

21 THE COURT: Anyone can leave if you want. The
22 attorneys I'd like to stay.

23 Let me say this. All right. I've already given you the
24 July 7th deadline for filing anything on July 25th. If you
25 believe you truly have to have something heard on the 25th or

1 some date prior to that, I'm going to require that all
2 committee counsel -- in other words -- let me back up. I'm too
3 tired. Sorry. Let me back up.

4 July 7th, anything filed by July 7th will be put on the
5 July 25th calendar without the specific need for an order
6 shortening time. All right.

7 What happens if you want something after July 7th that you
8 want heard on the 25th? You can only ask for an order
9 shortening time if all counsel agree to it, you know, the
10 committee counsel, just like the standard that we have.

11 If it is truly an emergency, and you can't get all counsel
12 to agree, you can still submit it, but you're going to have to
13 have some very good reasons why.

14 And Judge Markell will be reviewing the orders. He, you
15 know, frankly, doesn't want to get involved in the middle of a
16 case that requires, you know, a lot of a learning curve.

17 But there is -- or if you think that there's something
18 that has be heard before the 20 -- or really the 20 -- the
19 hearing is the 25th -- I'm available from the 21st on -- you
20 can attempt to file it, but, boy, you better have good reasons
21 and, you know, better be prepared for questioning about why you
22 had to have it.

23 I've already giving you deadlines for filing that budget
24 in advance of that hearing. The August 4th deadline for
25 hearing is on 4th will be August (sic) 14th?

1 THE CLERK: July?

2 THE COURT: Excuse me. July. Thank you.

3 THE CLERK: July 14th.

4 THE COURT: So if you file anything by July 14th,
5 that will go on the August 4th calendar without a need for an
6 order shortening time, and then the rest of the rules just kind
7 of govern.

8 Any kind of other housekeeping that we probably need to do
9 that I've forgotten? I guess not.

10 Oh, yeah. I guess on August 4th, that's only a half day.
11 That's going to be just as bad as today probably, right?

12 What does Judge Markell have on the 4th? Do you think he
13 could take my Chapter --

14 THE CLERK: (Indiscernible).

15 THE COURT: Can I move my Chapter 11s maybe to the
16 3rd --

17 THE CLERK: No.

18 THE COURT: -- since they wouldn't have been filed
19 yet.

20 THE CLERK: No. Why don't they come in all day on
21 the 11th? We have the 11th open.

22 THE COURT: You don't want to move the 4th to the
23 11th, do you? No?

24 MS. CHUBB: Your Honor -- yeah.

25 THE COURT: (Indiscernible) we can't.

1 MS. CHUBB: I won't be available on the 11th.

2 THE COURT: All right. So why can't we -- the
3 Chapter 11s on the 4th is what I'm saying.

4 THE CLERK: Okay. You also have a jury
5 (indiscernible).

6 THE COURT: I can move that. That's an argument.

7 THE CLERK: Okay.

8 THE COURT: But can we move the Chapter 11 calendar?

9 THE CLERK: Yeah. Yeah. I can -- I can -- we can
10 move it.

11 THE COURT: Move it to the 3rd. All right.
12 We'll give you all day on the 4th.

13 MS. CHUBB: And 9:30, your Honor?

14 THE COURT: Right. And we'll probably need all day
15 the 16th, won't we? Hopefully not.

16 Can we move the 16th motion calendar to the 17th, perhaps?

17 THE CLERK: Uh-huh. Yeah, I could do that, but you
18 have Chapter 13s in the afternoon.

19 THE COURT: Right. But why can't we move it to the
20 morning?

21 THE CLERK: Well, we can't -- you're going to do a
22 whole motion calendar all morning?

23 THE COURT: Yeah. Maybe I can get Judge Markell to
24 do the Chapter 7s. Well, that's all right.

25 I can give you all day the 16th. I'll take a break at

1 11:00 o'clock for my Chapter 7s, and then we'll do the rest of
2 the day, so I'll give you all day on the 16th, too.

3 So move my motion calendar on the 16th to the 17th. Okay.

4 MS. CHUBB: At 9:30?

5 THE COURT: Yeah. Um-h'm. All right. Thank you.

6 UNIDENTIFIED SPEAKER: Thank you, your Honor.

7 UNIDENTIFIED SPEAKER: Thank you, your Honor.

8 UNIDENTIFIED SPEAKER: Thank you, your Honor.

9 THE COURT: Been the best five days of my life.

10 UNIDENTIFIED SPEAKER: Enjoy Africa.

11 UNIDENTIFIED SPEAKER: Enjoy (indiscernible) for us.

12 THE COURT: Thank you.

13 (Court concluded at 07:43:14 p.m.)

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1 I certify that the foregoing is a correct transcript from
2 the electronic sound recording of the proceedings in the
3 above-entitled matter.
4
5

6 /s/ Biljana Dokic

10/21/10

7 Biljana Dokic, Transcriptionist

Date